Introduction to Environmental Governance

Course Workbook

FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE

Training, Mentorship & Professional Development

Last updated: 2017

Introduction to Environmental Governance:

course link:
https://labrc.com/public/courselet/IntroductiontoEnvironmentalGovernance/player.html

This course covers topics that are necessary for First Nations to successfully implement their environmental governance authorities and management actions on reserve lands. This course outlines how environmental governance is grounded in the Framework Agreement on First Nation Land Management (Framework Agreement).

Welcome
Welcome to the Introduction to Environmental Governance short online course.

Thank you to Opaskwayak Cree Nation for allowing us to use their Land Laws as an example.

The material provided in this short online course is current to date of course. Thank you to the environmental experts to the Lands Advisory Board (LAB), for aiding in the development of this course.

Objectives:
Upon completion of this course you may be more familiar with:

1. Information that can be applied in the delivery of environmental governance and management functions on developmental and operational First Nation's reserve lands.
2. Changing environmental regulatory requirements associated with the Land Code and Framework Agreement and how to respond to these changes.
3. The benefits and opportunities the Framework Agreement provides.

Module 1: Environmental Governance

What is Environmental Governance?

Environmental governance represents a major expression of this control over land and

resources. It greatly enhances a First Nation's ability to protect the overall environment.

Environmental governance means the actions and tools used to exercise control over First

Nation Lands waters and biota. Many of the programs, policies, and activities of a Lands

Department will have the potential to affect the environment.

Role of Chief and Council

Chief and Council bear ultimate responsibility for a First Nation's environmental governance decisions, initiatives, laws, policies, staffing, and funding. They also typically provide the political support to help guide the implementation of Environmental Governance. Staff, other Advisors and Committees tends to fulfill technical and consultative roles in these matters.

Unique to each First Nation

The conditions prevailing on reserves, the environmental issues faced by a First Nation, and the capacity to deliver environmental governance functions will be unique to each. The Lands Governance Director, the community, and Chiefs and Councils will need to tailor their environmental governance and management regime to suit the First Nation’s circumstances and capacities.

Importance of Environmental Governance

With the adoption of a Land Code, a First Nation assumes greater control over the laws, regulations, policies, and other tools that can be used to protect environmental values. Effective delivery of environmental governance tasks will help to ensure a healthy environment for present and future generations.

Healthy Environment:

A healthy environment will provide social and economic benefits to a First Nation. Community members will be able to lead healthier lives, without worrying about the quality of soil, water and air. Community members also will have greater confidence that the foods and medicines gathered from their reserve lands can be consumed without risk. The often-substantial cost of cleaning up a contaminated environment can be avoided, allowing scarce financial resources to be expended on socially desirable facilities and services. A healthy and functioning ecosystem can support wildlife resources - fish, birds and mammals - and plants.

Development Projects

A logical and transparent environmental governance regime will provide clarity and confidence for those wishing to invest in development projects on reserves.

Habitat Conservation

Habitat conservation is a governance tool and management practice that will conserve, protect and restore habitat areas for animals and wild plants by:

- Informing community members about habitat protection measures and involving them in habitat restoration activities. Using environmental plans to support funding applications for habitat improvement and protection
- Providing information to help land use plans protect environmentally sensitive areas, avoid areas subject to natural hazards, and reduce risks from known contamination or pollution.

These benefits and others can result from a carefully considered and diligently delivered environmental governance regime.

Module 2: Framework Agreement & Laws

Environmental Governance under the FA

Environmental Governance is:

1. Grounded in the Framework Agreement
2. Empowers First Nations to manage lands and resources, make laws, administer laws and enforce laws
3. Is good governance

For a First Nation to effectively manage the environment on First Nation reserve land it will:

- Make Laws
- Establish regulations
- Formulate policies
- Implement procedures

Framework Agreement Sections that Relate to the Environment

A Land Governance Director needs to possess a detailed understanding of the Framework Agreement's sections that deal with the environment. The following Framework Agreement sections contain some of the most important wording about First Nation's and environment.

Section 18.1
The council of a First Nation with a land code in effect will have the power to make laws, in accordance with its land code, respecting the development, conservation, protection,

management, use and possession of First Nation land and interests or land rights and licenses in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

Section 18.2
The power to make laws is more specifically described in other sections of the Framework Agreement. For instance, Sec. 18.2 (c) says that laws on environmental assessment and protection can be passed.

Section 23.1
Section 23.1 states
The council of a First Nation with a land code in effect will have the power to make environmental laws relating to First Nation land.

Section 23.2
The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation.

Section 23.3: The principles of these regimes are set out below.
Section 23.4: The environmental assessment and protection regimes will be implemented through First Nation laws.
Section 23.5: The Parties agree to harmonize their respective environmental regimes and processes, with the involvement of the provinces where they agree to participate, to promote effective and consistent environmental regimes and processes and to avoid uncertainty and duplication.

Section 23.6 states:
This Agreement is not intended to affect rights and powers relating to migratory birds or endangered species. These matters may be dealt with in the context of other negotiations. This Agreement is not intended to determine or prejudice the resolution of these issues.

Section 24 establishes the general guidelines affecting the development of a First Nation’s environmental management "regime."
Section 25 describes the process for a First Nation to prepare its own Environmental Assessment process.

Section 27 notes the importance of providing funding to actions associated with environmental regimes.
Section 27.1 states: The Parties understand that the obligation of a First Nation to establish environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation. Operational First Nations are responsible for complying with Canada's environmental laws, even if they have not adopted their own Environmental Protection (EP) and Environmental Assessment (EA) regimes.

The process for agreeing to funding levels is discussed in Section 30.
Section 30 states: An Individual Agreement between the Minister and a First Nation will determine the resources to be provided by Canada to the First Nation to manage First Nation lands and make, administer and enforce its laws under a Land Code. The agreement will determine specific funding issues, for example period of time, and terms and conditions.

For a copy of "Framework Agreement Sections on the Environment", please see the attached document.

First Nation Laws and Regulations

To better understand the environmental governance and management powers given to a First

Nation under their enacted Land Code we need to look at:

- What is a FN Law?
- What is Law Making?
- What is a Regulation?
- What are Policies and Procedures?
- What Federal Laws continue to apply?

First Nation Laws

Creating a First Nation law is one way of achieving a First Nation's governmental policy objectives. Laws are necessary when required to satisfy terms of the Framework Agreement, or where legal action is expected to be needed to ensure compliance. The Land Code is the main document that must be referred to before developing and drafting a First Nation law, as it provides for the authority and procedure to make the law.

In addition, a law may include many different kinds of provisions, ranging from simple prohibitions through a wide variety of regulatory requirements such as licensing or compliance monitoring. Laws should be used only when it is the most appropriate. It is up to the First Nation to show that this principle has been met, and there are no other ways to achieve the policy objectives effectively.

First Nation Environmental Laws

First Nation (FN) environmental laws must "meet or beat" the current federal standards and in some circumstances, provincial laws. A First Nation may replace some federal environmental laws with their own (for example, EA and contaminated site regulations) after a Land Code is adopted, as long as the FN meets the requirements stipulated in the Framework Agreement. A

FN should remember that merely having a law does not guarantee compliance. Inspection, enforcement and adjudication must accompany the adoption of laws.

Example:
The Opaskwavak Cree Nation (OCN) is an operational First Nation that has enacted a Land Law (Law) entitled 'Opaskwavak Uski-pa-mi-che-ka-win" (Protecting the land) of the OCN. The OCN Land Law grants broad powers to adopt and enforce environmental laws. The OCN Land Law articulates a vision that the law is to help attain, and identifies 24 specific purposes of the law, including:

- Ensure that OCN fulfills its duty to preserve and protect their land;
- Develop an awareness and understanding of their sacred laws and traditions regarding their land;
- Emphasize the importance of reciprocity and balance that must be maintained in interactions with their land (see Section 2.02 of the OCN law for more information on the purpose).

The Land Law lays out OCN's jurisdiction, power to make EP and EA laws (see section 2.07 for list of some of the laws they can enact), creates an OCN Environmental Division as the "Authority" to pursue the objectives of the law and protect the environment. The OCN Land Law covers a wide variety of topics, including:

- Issuing permits and licenses,
- Orders, violations, and compliance,
- Offences, liability, and immunity,
- Granting of regulatory powers to OCN Council,

The ability to make regulations, guidelines, and procedures dealing with EA, environmental management practices, pollution reductions, and avoiding adverse environmental effects.

Law Making

Introduction:
The council of a First Nation with a Land Code in effect will have the power to make laws, in accordance with its Land Code, respecting the development, conservation, protection, management, use and possession of First Nation Land and interests or land rights and licenses in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation Land.

Laws:
- Are sets of rules or norms of conduct that describe what can or cannot be done
- Must be obeyed by everyone, including private citizens, groups, companies, and governments
- Have a specific enactment procedure and are administered and enforceable through our system of courts

- Are not easily changed or amended

Who enacts a law?
A Law is enacted by government bodies:
• FN (e.g. through its enacted Land Code)
• Federal (e.g. through section 91 of the Constitution Act 1867)
• Provincial (e.g. through section 92 of the Constitution Act 1867)
• Municipal (e.g. by provincial legislation)
Click on picture of Authority to Make Laws chart to enlarge.

What is an adopted law?
When adopted, federal and provincial laws are normally known as "Acts" or "statutes". An example of a federal law is the First Nations Land Management Act which is the federal statute that ratifies and brings into effect the Framework Agreement.

Law Making Authority Recognized under the FA

The Framework Agreement recognizes the governance authority of First Nations to legislate and enact laws according to its own authority under its Land Code. The Framework Agreement recognizes the full authority law-making of operational First Nations. Thus, a Land Code enacted by a First Nation under the Framework Agreement is a "law" in the same sense that a federal or provincial statute is a "law".

What is a regulation?
Please click on the markers located on the graphic below for further reading.

Introduction:

Once a law is enacted it may contain the power to enact regulations. Regulations have the force of law and are "subordinate" to the statute. Regulations can normally be enacted more quickly and easily than statute laws but must be expressly provided for in the statute.

What is a regulation?
Regulations are directed at the more routine specifics of implementing the purpose of the statute. Regulations:
• Deal with the details or technical matters that are not found in a law
• Can be easier to change and amend
• Are made by federal or provincial Departments of government and approved by the respective Cabinets
• Departments and administrators generally write regulations to implement and support the requirements of the law.

Regulation Examples:

The following are regulation examples:
Fisheries Act enables Canada to enact dozens of specific sets or regulations such as the Pulp and Paper Effluent Regulations.

- Provincially, the British Columbia's Environmental Management Act provides for Contaminated Sites Regulations.
- Westbank FN Land Use Law No. 2007- 01 provides for Zoning Regulations to operationalize its requirements.

Policies & Procedures

Policies: Policies are less stringent set of rules or strategies set in place by a government to achieve goals or objectives associated with plans or laws. Easier to change and amend than are laws Not usually legally binding but must be observed by government representatives and employees.

Two kinds of policies:

There are two general kinds of policies:

1. Public Policy established by Political representatives. It reflects the values of the people as understood by the government. Public policy is often implemented through enactment of laws.
2. Policies that refer to the body of guidelines, directives, formal rules, mission statements and other formal statements that are put in place to implement laws.

Policies & procedures

Procedures:

- Are the formal statements of the processes to be followed to administer the laws, policies, and programs of a government?
- May be set out in formal Acts but are usually contained in administrative documents prepared by a government's staff

The term "Standard Operating Procedures" is often applied in the environmental governance area to describe generally accepted best practices for carrying out particular activities that may affect the environment.
An example is the "Standard Operating Procedures for the Environmental Monitoring of Marine Aquaculture in Nova Scotia".

Federal Legislation

In Section 40(2) of the FNLMA it states that the legislation does not extend or limit any right or power in relation to migratory birds, endangered species or fisheries. Therefore, an operational FN does not gain any new powers with respect to managing these resources under a Land Code.

Therefore, these pieces of Federal legislation continue to apply on reserves:

- Migratory Birds Convention Act
- Species At Risk Act
- Fisheries Act

Canadian Environmental Assessment Act

Other Federal Acts

Under some circumstances (discussed further in the Federal/Provincial Environmental Assessment Processes Course), the Canadian Environmental Assessment Act (CEAA) will still apply on First Nation Land.

Under clause 3 of the Framework Agreement the Indian Oil and Gas Act (IOGA) continues to apply to First Nation Land that "was subject to IOGA on the coming into force of the LC of a FN". Under clauses 20.2 and 20.3 of the Framework Agreement the following federal legislation apply to First Nation Land under a Land Code:

- Emergencies Act
- Nuclear Safety and Control Act
- Nuclear Energy Act

A First Nation will continue to have the power to adopt by laws as specified under the Indian Act.

Module 3: Implementation

How is Environmental Governance Implemented?

Environmental Governance is implemented by the Framework Agreement through the requirement of an Environmental Regime. An Environmental Regime may include a set of environmental laws, regulations, policies, processes, plans and guidelines. The purpose of an Environmental Regime is to help a First Nation to reduce contamination risk and protect the health of people and ecosystems on First Nation Land.

How is Environmental Governance Implemented?

Implementing Environmental Governance

Environmental Governance is implemented by the Framework Agreement through the requirement of an Environmental Regime. An Environmental Regime may include a set of environmental laws, regulations, policies, processes, plans and guidelines. The purpose of an Environmental Regime is to help a First Nation to reduce contamination risk and protect the health of people and ecosystems on First Nation Land.

Education and Outreach

First Nations that are successfully practicing environmental governance recognize the importance of community involvement, education, reporting, and policy development and implementation. Communities are involved in identifying environmental issues and determining what kinds of actions are needed to protect environmental quality or to correct environmental problems.

Through the preparation of an EMP, a First Nation can ensure that the community understands the environmental issues that need to be addressed, how the First Nation intends to respond to those issues, and how residents and businesses will be affected.

Participants in Environmental Governance

Environmental Governance requires a team of dedicated people to develop an Environmental Assessment (EA) and Environmental Protection (EP) governance and management regime. Each participant has a role in ensuring that environmental governance protects the lands and resources and reduces the risk and liability of the First Nation. Click on the markers on the graphic below for further reading.

Members

Community members play a big role in contributing to environmental governance. The level of involvement may be outlined in the First Nation Land Code and/or environmental law. Community members contribute their traditional knowledge, culture, spirituality, and values about lands, resources and the community. The success of environmental governance depends on the involvement, support, commitment, and compliance of community members.

Chief and Council

Chief and Council Implementing the environmental aspects of a Land Code means a greater amount of effort is required by Chief and Council. Ideally, only political duties such as approvals as well as certain aspects of project management should be undertaken by political representatives in order to reduce risk and liability of the nation.

Lands Governance Director

The Lands Governance Director (LGD) will play an important role in developing and implementing environmental governance policies and procedures. In some instances, the LGD may be the sole staff position responsible for environmental governance, and in other situations a separate Environmental Manager position may be created. As the person with technical responsibility for implementing provisions of environmental governance, the LGD or Environmental Manager will be responsible for may activities.

Other First Nations Staff

There are other departments and staff that affect the environment and need to be involved in any environmental governance regime such as:

- Public Works (e.g. building road close to a spawning ground)
- Housing (e.g. residential underground storage tanks leaking)
- Health Department (e.g. may do water sampling/ testing)

Other Governments

There may be numerous governments and organizations involved in First Nation environmental governance. First Nations organizations, such as tribal councils may also provide environmental governance services at little or no cost.

Business and Lessees

Business owners will need to consider how their land and resources related activities affect the environment. Lessees will need to be aware of and adhere to the environmental clauses within their leases. Both will need to know any FN environmental laws regulations, policies and or procedures that may affect them.

Consultants

Technical Consultants will be important participants in environmental governance. Few, if any, First Nations have sufficient internal staff resources to conduct, review and analyze all the environmental studies. Specialists in various fields may be needed to:

- Deliver EP measures
- Support EAS
- Monitor environmental conditions on
- Interpret or enforce laws
- Provide other services associated with environmental governance

Legal Counsel

Legal counsel will also be important participants in environmental governance. They will aid the First Nation to draft the laws necessary to support environmental governance. A First Nation should budget for involvement of consultants and lawyers as part of implementing an Environmental Management Regime (EMR).

LABRC

The Lands Advisory Board Resource Centre (LABRC) also provides no-cost technical support services to First Nations that are developing and delivering an EMR in the context of the Framework Agreement.

Canada

The federal government will continue to have authority over some aspects of the environment even after a First Nation has developed its Environmental Regime. Canada will continue to be an important source of funding for environmental governance, and FNs will need to continue to engage federal departments on relevant environmental matters (e.g: fisheries and species at risk).

Provinces

First Nations may choose to involve provincial agencies in developing and implementing environmental protection measures.

Local Governments

A First Nation may choose to involve local governments of adjacent jurisdictions in development and implementation of laws, regulations and policies regarding the environment. For instance, utilities (storm drains, water lines, sewers and roads) often cross reserve boundaries, and operation and maintenance responsibilities may be shared between a FN and local government.

A First Nation may choose to adopt laws and regulations that are similar to, or consistent with, those of neighbouring jurisdictions. Such consistency may improve communications among jurisdictions and reduce obstacles to encouraging on-reserve development. A First Nation may also consider contracting for the services of adjacent local governments. For instance, environmental inspection, road maintenance, or other services may be more reasonably obtained by contracting with an adjacent municipality than by developing those capabilities within a First Nation. Conversely, First Nations that develop such capacities may be able to market them to other governments.

Environmental Management

What is Environmental Management?

Environmental Management is the process used to reduce harmful effects of human activity on the environment, and to avoid environmental hazards that affect communities. This process includes the use of laws, regulations, policies, guidelines, education, and other measures to help a First Nation to achieve their environmental goals. Achieving a harmonious relationship between human communities and natural ecosystems is one of the great challenges of our time and is a basic goal of environmental management.

Aboriginal Concept of Environmental Management

Aboriginal peoples see themselves as having a strong connection to the land. They view themselves as stewards of the land, with which they hold a spiritual connection and sacred trust. The aboriginal approach to stewardship is holistic, respecting and recognizing the part every animate and inanimate thing plays in supporting the integrity of the whole ecosystem.

Stewardship of their sacred lands is not about the power and control over the land, but about a responsibility to take care of the land for the future generations. Stewardship has always been about sustainability as noted in the Great Law of the Iroquois Confederacy: "In our every deliberation we must consider the impact of our decisions on the next seven generations". Under the Framework Agreement, First Nations can apply their concepts to managing the environment on reserves.

Environmental Management Before a Land Code

If a First Nation has not adopted a Land Code, then the responsibility for managing land and the environment on First Nation reserves is with Canada. First Nations have identified environmental problems on their reserves that occurred under the Indian Act, including:

- Poor lease terms, allowing land degradation or contamination to occur
- Failure to monitor environmental conditions and to respond to Problems
- Excessive focus on minimizing costs of building homes and installing services
- Lack of interest in creating attractive, sustainable, livable Communities

Phase I Environmental Site Assessment

First Nation Communities, Councils and LGDs share a responsibility for avoiding environmental damage caused by development and other human activities. During the developmental phase, through Phase I Environmental Site Assessment, a First Nation should have identified areas of potential environmental concern (contamination). Phase II or Ill ESAs and risk assessments must be conducted to determine the actual presence of contamination, its extent and human and ecological risks. Plans for remediating contaminated land and water typically are prepared after completion of ESAs and risk assessments. For a summary of Phase II and Ill ESAs click on "Attachments" in the top right corner. Environmental management can help a FN avoid future environmental damage, and to respond to legacy conditions.

Create Your Own Environmental Regime

The Framework Agreement and the adoption of a Land Code provide a unique opportunity for First Nations to develop environmental laws, plans, and policies that are specific to their needs. First Nations need not mimic the laws, regulations, and policies of non-Aboriginal jurisdictions. Other approaches to environmental management have been influenced by factors that may not apply on First Nation Land. These non- Aboriginal approaches generally have proven ineffective in achieving the goals of a clean environment, functioning ecosystems and communities that are desirable and sustainable.

A First Nation may experience pressure from outside agencies and advisors to "do what we do." Although lessons can be learned from others, adopting laws and governance structures from other jurisdictions may not deliver the kind of results that a FN desires or can achieve under the Framework Agreement. It is important to learn from others. It is equally important to recognize the limitations of other Environmental Regimes, and to look for ways of "doing better".

Creating an Environmental Regime is a unique opportunity and a chance to start from scratch. The Framework Agreement and signing of your Land Code give you the ability to look around at other FNs and other sources and build a process that is specific to them and addresses their unique First Nation needs. Depending on your resources and capacity, this may seem like a daunting task, but you do have an opportunity to use what is currently out there, build your own or create a combination of both.

Adopting Innovative Approaches

- Reflect Aboriginal culture, perspectives, and history
- Are designed to achieve the highest development and environmental standards of the 21st Century
- Can be implemented with the capacity available to a First Nation
- The examples contained in this course are just that-examples. A First Nation may create new ways of managing the environment on their reserve lands and communities

Where to Start:

What is the Starting Point?

Question

How have environmental conditions on reserve been documented?

Phase 1 ESA Report

What environmental issues are presently important in the community?

Illegal dumping

How are those important environmental issues being managed?

Indian Act Dumping Law

As a starting point, First Nation staff should understand what laws are in place and what activities are occurring on reserve and in surrounding jurisdictions that could affect environmental governance. For instance, answers should be sought to the following questions (see image left).

The answers to some of these questions may have been obtained as a First Nation conducts its due diligence that precedes ratification of a Land Code. Other answers should be sought as the EMP is prepared.

FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE

Glossary of Terms and Acronyms

Best Practices

Simply put best practices are commercial or professional procedures, method or technique that are accepted or prescribed as being correct, most effective and has consistently shown results superior to those achieved with other means, and that is used as a benchmark. Best practices are used to maintain quality as an alternative to mandatory legislated standards and can be based on self-assessment or benchmarking.

Bylaws

Section 81 of the *Indian Act* sets out a number of purposes for which a First Nation may enact by-laws including, *inter alia*, the regulation of traffic, law and order, prevention of disorderly conduct and nuisances, construction of infrastructure and housing, residency of band members, zoning, trespass, control of animals, fish and game, and so on.

Contaminant

Contaminant: any physical, chemical, biological or radiological substances in air, soil or water that has an adverse effect. Any chemical substance who concentration exceeds background concentrations, or which is not naturally occurring in the environment.

Contamination

Contamination: the introduction into soil, air or water of a chemical, organic or radioactive material or live organism that will adversely affect the quality of that medium.

Developmental

When referring to the *Framework Agreement* "developmental" means those First Nations who are signatories to the Framework Agreement and who are developing a Land Code, an Individual Agreement with Canada, and a community approval process to ratify the *Framework Agreement*, Land Code and Individual Agreement through a vote of the eligible voters.

Environmental Assessment (EA)

According to the International Association of Impact Assessments, an EA is

"the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made."

An EA examines effects of proposed projects on soil, air quality, water quality and supply, fisheries, wildlife, traffic, noise, community health, economic development, archaeology and a variety of other social, economic and environmental topics. A well-designed EA assesses the “cumulative effects” of a proposed project combined with other past and proposed future human activities. Ways of avoiding or reducing impacts are identified in an EA.

An EA is a planning tool, a means of reviewing the effects of proposed development, a process of community engagement and an instrument for complying with regulatory requirements. After considering federal and provincial environmental assessment processes, an operational First Nation can design an efficient EA regime that is beneficial to the environment and to the quality of development occurring on reserves.

Environmental Management Information Systems (EMIS)

An environmental management information system or EMIS consists of formalized steps to capture environmental information, and efficient procedures to retrieve it. An EMIS includes the collection of information about environmental issues, and stores the information in archives, databases and maps

Environmental Protection (EP)

Environmental protection is defined as the efforts made to identify, remediate and prevent contamination of soil, water and air, and to reduce attendant risks to environmental and human health and safety. The adverse effects of exposure to contaminants may result from direct or indirect contamination of soils, water, and air from hazardous materials and uncontrolled exposure to those contaminants.

First Nation Lands

"First Nation land", in respect of a First Nation, means all or part of a reserve that the First Nation describes in its land code.

Framework Agreement on First Nation Land Management (FA)

The Framework Agreement is a government to government agreement signed in 1996. It gives First Nations the option of withdrawing their lands from the *Indian Act* in order to exercise control over their lands and resources.

Individual Agreement

An Individual Agreement between each community and Canada will be negotiated to deal with such matters as: the reserve lands to be managed by the First Nation, the specifics of the transfer of the administration of land from Canada to the First Nation, e.g. the interests in land held by Canada that are to be transferred to the First Nation, the transfer of revenues and an interim environmental assessment process, and the funding to be provided by Canada to the First Nation for land management.

FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE

Land Code (LC)

A Land Code will be the basic land law of the First Nation and will replace the land management provisions of the Indian Act. The Land Code will be drafted by the First Nation and will make provision for the following matters: identifying the reserve lands to be managed by the First Nation (called "First Nation land"), the general rules and procedures for the use and occupation of these lands by First Nation members and others, financial accountability for revenues from the lands (except oil and gas revenues, which continue under federal law), the making and publishing of First Nation land laws, the conflict of interest rules, a community process to develop rules and procedures applicable to land on the breakdown of a marriage, a dispute resolution process, procedures by which the First Nation can grant interests in land or acquire lands for community purposes, the delegation of land management responsibilities, and the procedure for amending the Land Code.

Lands Advisory Board (LAB)

Under Sections 38, 39, and 40 of the Framework Agreement, the First Nations have established a First Nation Land Advisory Board (LAB) to provide:

- Developmental First Nations political, technical, legal, advisory and financial support
- Operational First Nations assistance in implementing the Framework Agreement and their own land management regimes.

The LAB is composed of Chiefs regionally elected from the Operational First Nations.

Some of the LAB's functions include:

- Establishing a resource centre
- Providing strategic direction to the Resource Centre
- Proposing to the Minister such amendments to the Framework Agreement and the federal legislation, as it considers necessary or advisable in consultation with First Nations
- Negotiating a funding method with the Minister and performing such other functions or services for a First Nation as are agreed to between the LAB and the First Nation.

The LAB established a resource centre to carry out many of its technical functions and this body is the Lands Advisory Board Resource Centre (LABRC).

Lands Advisory Resource Centre (LABRC)

Under the Framework Agreement, the First Nations have established a LABRC to assist the First Nations in implementing their own land management regimes. The LABRC is the technical body intended to support First Nations in the developmental and operational phases implementing the Framework Agreement
The LABRC's functions are:

- Developing model land codes, laws and land management systems
- Developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations

- On request of a First Nation, assisting the First Nation in developing and implementing its land code, laws, land management systems and environmental assessment and protection regimes - assisting a verifier when requested by the verifier
- Establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code
- On request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty
- Proposing regulations for First Nation land registration

Lands Governance Director / Lands Manager (LGD)

A Lands Governance Director / Lands Manager is the person employed or otherwise engaged by the First Nation to oversee the day to day operations of the Lands Department and the administration of the First Nation Land Code; and where applicable the signing of documents, including written instruments, as authorized by Council.

Liability

Liability: obligations arising from past transactions or events, the settlement of which may result in the transfer or use of assets, or the provision of services or other economic benefits in the future.

Phase I Environmental Site Assessment (ESA)

Phase I ESAs determine only the potential for contamination to exist on a property, and are based on a site inspection, review of maps, reports, historical files, and interviews with landowners and government officials. No sampling is conducted as part of a Phase I ESA.
A Phase I ESA might identify “Areas of Potential Environmental Concern” or “APECs”.

Reserve

The Constitution Act of 1867 Section 91 (24) - "Indians and lands reserved for Indians":

- Creates a distinction between Indian reserve lands and other lands in Canada
- Provides that Indians and reserve lands are a federal responsibility
- Gives the federal government exclusive jurisdiction over reserve lands
- Provides that only Parliament can legislate with regard to the use of reserve lands

The basic legal framework underlying reserves is:

- The underlying legal title to reserves belongs to the federal Crown
- How the reserve was created (e.g. before or after Confederation in 1867)
- Pursuant to section 2 of the Indian Act, reserves are set aside by the Crown in Right of Canada for the use and benefit of a First Nation

The Framework Agreement (see Section 4) clarifies that reserve lands under a Land Code will continue to be reserves within the meaning of the Indian Act and that any reserve, title to which is vested in Canada,

and managed by a First Nation under a Land Code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.

Benefits of Environmental Governance

There are many benefits to First Nations when they control their own environmental management and develop and implement their own unique environmental management plans.

There are two main categories of benefits:

- Environmental Quality Benefits
- Community Benefits

The benefits of environmental management include:

1. Avoiding the cost of remediating newly-contaminated sites
2. Reducing a First Nation's environmental liability
3. Complying with *Framework Agreement* requirements for environmental protection and environmental assessment
4. Protecting the health of people who live and work on reserves from environmental risks
5. Improving the Community members' confidence that Council is protecting their environmental interests
6. Improving the quality of fish and wildlife habitat,
7. Ensuring that land use plans protect environmentally sensitive areas and reduce the risk from environmental hazards
8. Facilitating economic development that benefits—and does not harm—the community
9. Creating an efficient and rigorous system for assessing proposed developments
10. Creating a clean and healthy environment that attracts quality development
11. Ensuring that future generations will inherit a clean environment
12. Instilling community pride in the creation and protection of a quality environment

TABLE X
COMPARISON OF A TYPICAL ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL SITE ASSESSMENT

	Environmental Assessment (EA)	Environmental Site Assessment (ESA)
Purpose	Identify potential environmental, social, economic, and cultural impacts of proposed development	Determine the presence of potential contamination and the concentrations, extent and risk of actual contamination
Topics studied	Many—physical, social, economic, cultural. Specific topics are identified during scoping of EA	Chemical contaminants of soil, water, or air. The contaminants studied are determined by past or present land use or previous sampling
Spatial coverage	Proposed development site and surroundings	Area potentially affected by contamination
When conducted?	During review (and before approval) of developments or land use plans	Mainly before property transfer or redevelopment
Results	Describes and rates potential impacts and mitigation measures	Describes site conditions, extent and severity of contamination, and remediation plans
Community involvement	Yes—extensive involvement of interested parties	Limited to land users
Effect on pollution	Avoid contaminated areas or consider contamination in development design, impacts, or mitigation	Clean up or manage risks of identified contamination
Perspective	Forward looking. Predicts future environmental and socio-economic impacts	Backward looking. Describes effects of past land uses and human activity

Environmental Management Plan Elements

A Guide to Preparing Environmental Management Plans For Operational First Nations

VERSION 2.0/ MARCH 2016

Prepared for the First Nations Land Management Resource Centre Inc.

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A Guide to Preparing Environmental Management Plans for Operational First Nations

Contents

ACKNOWLEDGEMENTS

Preparing this Environmental Management Plan Guide involved the contributions of many people. The original idea for the Guide was provided by Meko Nicholas, Assistant Executive Director of the Lands Advisory Board Resource Centre (LABRC). The LABRC Executive Director, Dr. Graham Powell, authorized preparation of the document and advice on substance and presentation. Dr. Daniel Millette, Director of Strategic Planning and Communication for LABRC offered valuable suggestions for the Guide's content, and Ruth Nahanee, Online Knowledge Dissemination, provided many of the document's graphics. Suzanne Winch, LABRC Planning and Communications, formatted and enriched the presentation of the Guide. The Guide was reviewed during three Environmental Management Planning workshops, which generated many valuable suggestions by the First Nations represented at the meetings. Cheri Redden, Director of First Nations Land Management for Indigenous and Northern Affairs Canada (INAC), assembled and provided comments on the draft document prepared by her colleagues.

The value of this Guide is the result of the actions of the people who devoted their time and effort to its preparation.

The Guide will need to be updated from time to time, to reflect changes in legislation and lessons learned from the First Nations that continue to develop and implement Environmental Management Plans.

It has been a pleasure working with the First Nations, LABRC, and INAC staff in preparing the Environmental Management Plan Guide.

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March 2016

GLOSSARY AND ACRONYM DEFINITIONS

BMP	Best Management Practice
CCME	Canadian Council of Ministers of the Environment
CEAA	Canadian Environmental Assessment Act
CEPA	Canadian Environmental Protection Act
Courselets	Online information provided by LABRC to aid First Nations staff in implementing their Land Codes and managing their lands, including environmental matters.
DFO	Fisheries and Oceans Canada
EA	Environmental Assessment, a study intended to identify potential future impacts of proposed development and mitigation measures to avoid, reduce, or compensate for project effects.
EMP	Environmental Management Plan, intended to identify important environmental issues and propose methods to respond to those issues.
ESA	Environmental Site Assessment, designed to identify potential or actual environmental contamination of soil, water, or air, as guided by Canadian Standards Association Guides Z768 and Z769. Phase I, II, and II ESAs represent increasing levels of information about presence, extent, and remediation of contamination.
FNLMA	First Nations Land Management Act, the federal act that supports the *Framework Agreement* on First Nations Land Management
INAC	Indigenous and North Affairs Canada
LAB	Lands Advisory Board, the elected body authorized by the *Framework Agreement* that assists First Nations in developing and implementing Land Codes and other provisions of the *Framework Agreement.*
LABRC	Lands Advisory Board Resource Centre, the staff hired by LAB to deliver technical services to First Nations and to the LAB.
RFP	Request for Proposals, a document circulated to consultants or other firms to solicit the submission of work programs, budgets, staff credentials, and related materials. The resulting proposals are used by a client to select a firm for a specified project.
SARA	Species at Risk Act

INTRODUCTION AND PURPOSE

This guide is intended to assist Operational First Nations in preparing Environmental Management Plans (EMPs)[1]. There is no legal requirement to prepare an EMP, but most First Nations recognize the value of planning as an important initial step in the environmental governance that is enabled by the *Framework Agreement*. Questions often arise as First Nations embark on environmental planning, and this guide will provide answers and direction as communities conduct this important task.

Over the past several years, the Lands Advisory Board Resource Centre (LABRC) has prepared other information on Land Code implementation, including material on environmental management. In particular, the online courselets [http://labrc.com/resources/courselets/] cover a variety of environmental topics. Before preparing an EMP, it would be useful to review the courselet material thoroughly.

One of the LABRC courselets says that an EMP:

"Defines a First Nation's approach to important environmental issues and organizes actions to achieve specified environmental goals".

An EMP, therefore, can be seen as a tool for identifying environmental issues on a First Nation's land, and proposing responses to resolve those issues.

There is no single best way to prepare an EMP. Each First Nation's situation is unique, influenced by different priorities, challenges associated with environmental issues, capacity, and community expectations. EMPs should reflect this distinctiveness, both in the content of the plans and in the ways they are prepared.

[1] This guide refers to Environmental Management Plans, though some First Nations may call the documents Environmental Plans, Environmental Management Frameworks, or other similar terms. Environmental Management Plans should not be confused with Land Use Plans, Environmental Site Assessments, or Environmental Assessments. All of these tools are necessary to adequately manage First Nations lands.

A. MEETING A FIRST NATION'S ENVIRONMENTAL REQUIREMENTS UNDER THE *FRAMEWORK AGREEMENT*

The *Framework Agreement* contains several sections that influence the content of an EMP.

Framework Agreement Sections	Description
Granting law-making powers **[Sec. 8.1]**	» The council of a First Nation with a land code in effect will have the power to make laws, in accordance with its land code, respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licenses in relation to that land.
Environmental Regimes & Laws **[Sec. 3.1]**	» The council of a First Nation with a land code in effect will have the power to make environmental laws relating to First Nation land. » The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation. The environmental assessment and protection regimes will be implemented through First Nation laws. » The Parties agree to harmonize their respective environmental regimes and processes, with the involvement of the provinces where they agree to participate, to promote effective and consistent environmental regimes and processes and to avoid uncertainty and duplication.
Limits to environmental authority **[Sec. 23.1]**	» This Agreement is not intended to affect rights and powers relating to migratory birds or endangered species. These matters may be dealt with in the context of other negotiations. This Agreement is not intended to determine or prejudice the resolution of these issues. » Before an Operational First Nation considers drafting laws and regulations dealing with fish and wildlife, it should recognize that several federal acts remain in effect on reserves, namely the Migratory Birds Convention Act, Species at Risk Act, and Fisheries Act. Other federal laws that continue to apply on Operational First Nation land include, among others, the Indian Oil and Gas Act, Emergencies Act, Nuclear Safety and Control Act, and Nuclear Energy Act.

Funding and environmental responsibility **[Sec 27.1 & 30.1]**	» The Parties understand that the obligation of a First Nation to establish environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation. » An individual agreement between the Minister and a First Nation will determine the resources to be provided by Canada to the First Nation to manage First Nation lands and make, administer and enforce its laws under an Operational Funding Agreement. The agreement will determine specific funding issues, for example period of time, and terms and conditions.

Using the authority contained in the *Framework Agreement*, an EMP can outline the kinds of laws a First Nation wishes to pass. The First Nation should prepare "regimes" pertaining to environmental protection (dealing with contaminants) and environmental assessment. Such regimes may include policies, procedures, and permit requirements, and must be implemented via First Nations' laws. Regimes (and laws) dealing with other environmental management or land governance matters also may be prepared.

Operational First Nations continue to have the ability to adopt bylaws under the Indian Act. Such bylaws are generally considered to be relatively ineffective in addressing environmental issues.

B. ENVIRONMENTAL MANAGEMENT RESPONSIBILITIES

With the adoption of a Land Code, a First Nation accepts responsibility for governing and managing its lands. This responsibility can be seen as having the following three components.

1. Protecting community members and reserve ecosystems from environmental harm by controlling human actions and making sure that development and other human actions do not create environmental problems or increase risks. Such protections may mean prohibiting development in areas subject to natural hazards (e.g., floods or landslides), preventing contaminated soil or other material from being dumped on reserves, and assuring that community members have clean water to drink and clean air to breathe.
2. Complying with environmental requirements of the *Framework Agreement.* Section B of this Guide presents the environmental sections of the *Framework Agreement*, with which First Nations must comply. At a minimum, a First Nation must have environmental protection and environmental assessment regimes, policies, laws, and other measures to address identified environmental issues. A First Nation's obligations to undertake these actions are subject to the availability of adequate resources and expertise.
3. Complying with federal environmental laws. The *Framework Agreement* does not exempt First Nations from complying with other federal environmental laws. For example, First Nations must still abide by provisions of the Fisheries Act, Species at Risk Act, and Migratory Birds Convention Act. The Section 27.1 requirement for adequate resources and expertise does not apply to this need to comply with other federal laws.

Legal and potentially financial liability accompany an Operational First Nation's responsibilities for managing environmental issues that are created after a land code takes effect. For instance, an operational First Nation may be liable for environmental incidents that could have been reasonably foreseen or avoided. Legal action or fines could result from failure to comply with federal laws or from allowing contamination from a reserve to affect public health or environmental quality. Such liability can be reduced if a First Nation shows due diligence in identifying environmental issues and taking action to respond to those issues. Careful preparation and active implementation of an EMP can be an important element in proving due diligence in environmental management.

Environmental issues that existed before a land code takes effect remain the responsibility and liability of Canada.

C. DETERMINING WHETHER AN EMP IS NECESSARY

The *Framework Agreement* does not refer to EMPs. The usefulness of such plans has become evident as First Nations wrestle with questions about how to meet their legal obligations, limit liability, and reestablish their roles as stewards of their land. Even though First Nations are not required to prepare EMPs, experience of many First Nations indicates that such plans are valuable aids to setting directions and guiding future efforts to achieve environmental management and land governance goals.

A First Nation may choose to forego the preparation of an EMP if the following conditions exist:

- An Environmental Management Framework or similar document has been completed and adopted by Council,
- No major environmental issues exist that affect First Nations land, air, water, or community members,
- Limited future land development is anticipated,
- The community is well informed about environmental issues on First Nation lands
- Staff and Council understand what environmental laws and policies are needed, or such laws and policies are already in place,
- The First Nation implements effective budgeting, staffing, and work program planning and approval processes for environmental management.

To decide whether the foregoing conditions prevail, the First Nation's environmental staff should assemble and review available environmental reports to ensure that important issues have been identified and a response strategy has been developed. The assistance of specialists may be necessary. Existing or future development that could affect the environment should be identified and considered.

The results of this review of available information and environmental conditions should be discussed with advisory committees (such as a Lands Committee or Environment Committee) and Council. A clear Council decision should be sought on whether or not to proceed with an EMP.

C.1. Benefits of an EMP

As decisions are considered regarding the preparation of an EMP, the benefits of having such a plan should be part of the discussions.

EMPs provide many benefits to First Nations, including:

- Identifying and listing important environmental issues that should be addressed,
- Engaging the community in addressing environmental issues,
- Articulating a clear vision of a desired future environmental condition, with associated goals and objectives of environmental management on First Nations land,
- Allowing traditional knowledge to be documented and integrated with a First Nation's environmental management program, either through new investigations or use of Traditional Use Studies that may have been conducted on the community's lands,
- Recommending specific policies and actions to respond to the identified environmental issues,
- Determining the kinds of laws that will be needed,
- Providing a schedule and strategy for future actions, which will aid in preparing work programs, budgets, funding applications, and staffing plans,
- Expressing a First Nation's rights and governance authority over its lands, and communicating that authority to other governments, businesses, and institutions,
- Forming a rigorous process that will reduce the First Nation's environmental liability risk,
- Identifying ways to avoid the effects of contamination on reserves and subsequent costly remediation, and
- Creating a document that communicates the First Nation's environmental priorities and directions to staff, community members, other governments, businesses, and institutions.

To achieve these benefits, a First Nation must design and implement an appropriate process for preparing its EMP.

EMPs can also avoid common environmental management problems. For example, without the clear direction provided by an EMP, a First Nation may experience:

- "Crisis management," in which Council and staff fail to anticipate problems, and instead respond to a series of environmental emergencies,
- Ineffective program administration, as there is little structure to environmental management, guidance to staff, or a defined work program for resolving environmental issues,
- Work programs that are not cost-effective, as the First Nation lacks criteria for determine how best to schedule work and spend its environmental funds, and
- Friction between the First Nations community, Council, staff, and adjacent jurisdictions, as the dialog and information sharing that accompanies preparation of an EMP is absent

Finally, without preparing an EMP, a First Nation may experience an increase in liability for environmental problems because it failed to show "due diligence" represented by a well-planned process of environmental management.

C.2. Relationship of EMP and other plans and studies

EMPs do not exist in a vacuum, but are one of a series of plans and studies conducted by First Nations as part of land management. Figure 1 shows the relationship among some of the more common kinds of plans and studies conducted by First Nations that have potential links to environmental issues.

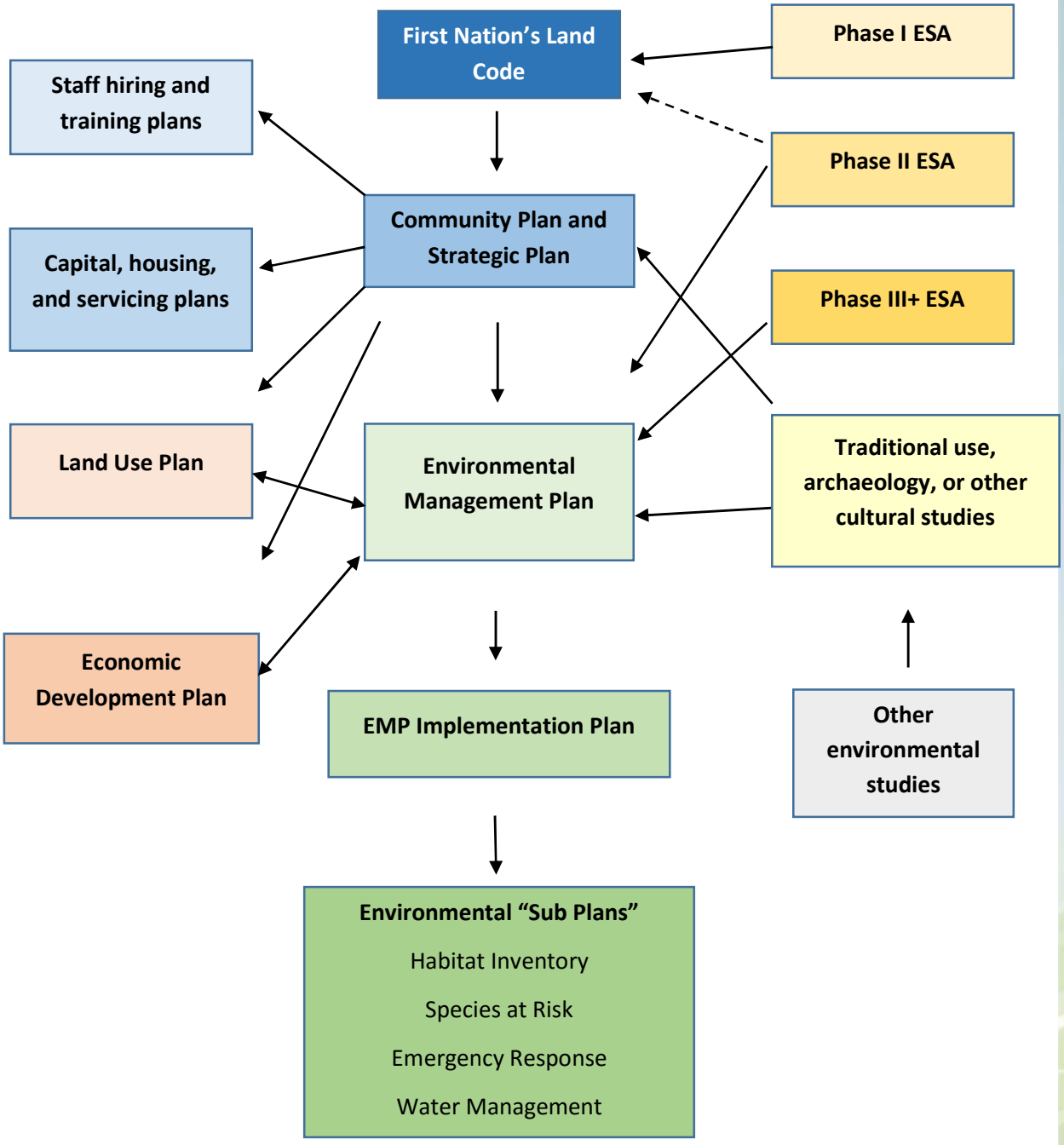
Phase I ESAs are typically completed before a Land Code vote, though Phase II ESAs are more useful in understanding the actual presence or absence of contamination and associated environmental risk and First Nations liability. ESA findings are helpful in preparing EMP descriptions of environmental conditions on reserves and areas potentially requiring remediation.

Most First Nations prepare a strategic plan to guide Chief and Council actions following a successful Land Code vote. Staff hiring and training plans, capital plans, land use plans, and economic development plans are some of the documents prepared by Land Code First Nations that are related to environmental management. As shown in Figure 1, the relationship between an EMP and, say, a Land Use Plan or Economic Development Plan is reciprocal. That is, the environmental implications of development need to be considered in an EMP, and environmental values and policies contained in an EMP should influence land use and economic development decisions.

Studies and assessment of cultural features and activities could influence an EMP. For instance, coastal or bank erosion affecting middens or cemeteries could be deemed an important environmental issue. Similarly, areas used for harvesting traditional medicines or food could be considered environmentally sensitive and included in an EMP.

After adoption of an EMP, a First Nation should prepare a detailed, multi-year implementation plan. The implementation plan should assign responsibilities for environmental programs, estimate budgets, and establish schedules. Additional detailed plans dealing with specific environmental matters may be needed to advance the goals and policies of the EMP.

Figure 1: Relationship of EMPs to other Operational First Nation plans and studies



D. DECIDING WHO SHOULD PREPARE THE EMP

After a First Nation has determined that it wants to prepare an EMP, several preliminary steps should be taken. An initial question to answer is, should a First Nation prepare an EMP using its own staff or should it hire a consultant? Several ancillary questions are:

- Do First Nations staff have sufficient training and experience in environmental planning to prepare an EMP?
- Even if staff are qualified to prepare an EMP, do they have time available to do so? Preparing an EMP is time consuming, and could require a full time commitment of six months or more. Such a commitment may conflict with other job requirements of qualified staff.
- Does the First Nation have the capacity to produce maps, print and bind the report, and prepare materials for community review?
- Does the First Nation have the same kind of liability insurance that an environmental planning professional might have, in the case of errors or omissions?

As an aid to making decisions about the use of First Nations staff, and perhaps to guide hiring, Appendix B contains examples of job descriptions for a First Nations Environmental Manager and Environmental Technician. First Nations would need to review such descriptions to determine if they are applicable to local circumstances before using them in a hiring process.

As it decides how to prepare an EMP, a First Nation may consider collaborating with nearby First Nations. By pooling their staff and financial resources, two or more First Nations may find that they have the capacity to prepare their EMPs using their own personnel. If such collaboration seems feasible, the First Nations should develop a detailed agreement about how the work would be conducted, work effort to be allocated to each community, deliverables, reporting relationships, and confidentiality. To promote efficiency and effectiveness in preparing the EMP, a single project manager should be assigned, regardless of the number of First Nations pooling their resources.

Some First Nations have been successfully prepared EMPs by First Nations staff. If a First Nation decides to pursue this route, the information in this Guide should be helpful in organizing and conducting the initiative.

In most cases, First Nations that have recently adopted Land Codes lack the staff capacity to conduct environmental planning work. These First Nations typically seek the assistance of the LABRC and often retain consultants to help prepare EMPs. Using consultants to prepare an EMP requires care and attention, and the following section presents information to aid First Nations in the process of retaining and managing consultants involved in preparing EMPs.

E. USING CONSULTANTS TO PREPARE AN EMP

This section provides suggestions for selecting the right consultant to prepare an EMP, and ensuring that the process and products are satisfactory for all parties. LABRC staff are available to assist First Nations in developing an approach to hiring environmental consultants.

The EMP will serve as a guide to the First Nation, so consultants must involve First Nations staff in preparing plans. Through this involvement, the First Nation will be able to understand the subtleties of the EMP and be more effective in implementing the plan and answering community questions about it. As with other land management-related plans, it will be of little help if the consultant goes away, prepares the EMP, and then just delivers it to the First Nation. Such an approach creates dependency on the consultant to interpret and implement the plan, which may be profitable for the consultant, but inadvisable for the First Nation.

Similar to the approach described in Section D of this Guide, two or more First Nations may choose to combine their efforts and hire a single consultant to prepare their EMPs. Such collaboration may reduce consultants' overhead costs for travel and accommodation. However, because separate EMPs (and community meetings and field work) would be required for each participating First Nation, collaboration may not materially reduce project costs for participating First Nations.

The remainder of this section explains the process for selecting and working with consultants to prepare an EMP.

E.1. Who should be invited to bid?

A First Nation may have a relationship with a suitably qualified consultant, or a Request for Proposals (RFP) may be prepared to solicit bids from environmental planning firms to participate in the project.

In most cases, it would be advisable for a First Nation to invite a limited number of firms to prepare proposals. If an RFP is broadcast widely (such as through government bid websites, newspaper advertising, or online sources), a very large number of proposals could be received, creating a burden for staff who must review the proposals. By selecting a smaller number of qualified firms that will be directly requested to submit proposals, the First Nation's selection process will be simpler. In addition, preparing proposals is a time-consuming, expensive process for consultants, and it is discourteous to ask firms to spend time unnecessarily. Some consultants—particularly successful firms that are already busy—may not respond to a "cattle call," where the odds of winning the work are small. Firms are more likely to respond to a direct invitation to a few selected companies, and to devote more effort to preparing proposals under such circumstances.

A First Nation may identify candidate firms by asking other First Nation communities or municipalities for references of capable environmental planning firms. Professional

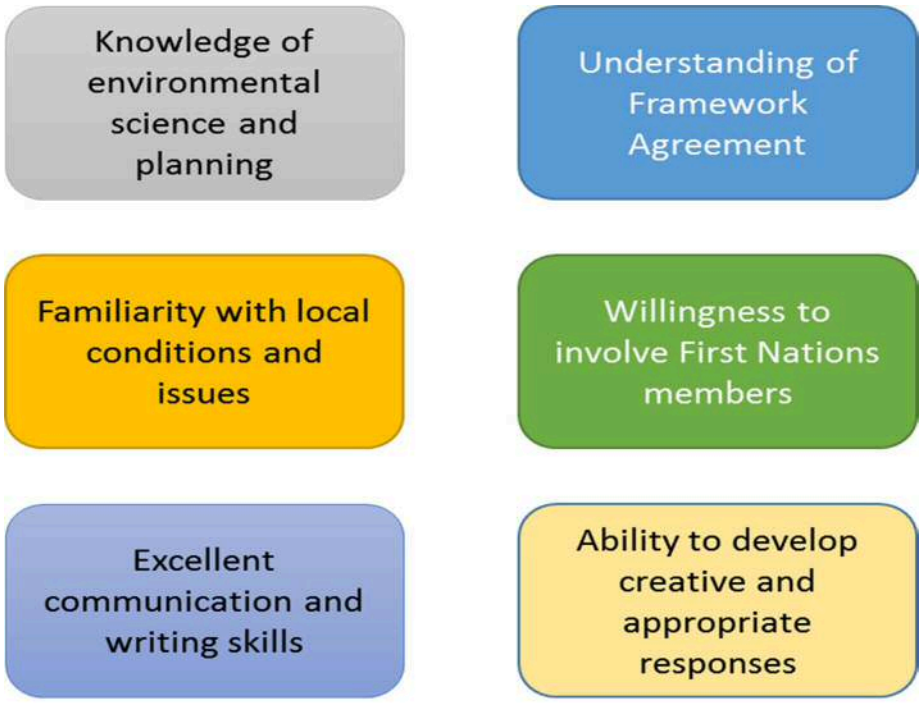
organizations, such as provincial branches of the Canadian Institute of Planners, may be able to provide a list of consultants. Online web searches can help to identify firms that have a presence on the Internet or that have published environmental planning documents. Appendix C of this Guide presents weblinks to some of the professional organizations in Canada that could aid in selecting environmental consultants.

Though there are no fixed rules for how many bids should be requested, a rule of thumb is no fewer than three and no more than six. The number of available firms may be influenced by the location of the First Nation's reserves; rural areas typically have fewer nearby firms than areas closer to urban centres.

E.2. Basic qualifications of EMP consultants

A First Nation should obtain services of a consultant experienced in environmental planning and familiar with the *Framework Agreement.* Preparing an EMP is a specialized combination of skills that few consultants possess, even those who purport to be environmental planners. A firm that is unfamiliar with the *Framework Agreement* may struggle to deliver an EMP that meets the needs of an operational First Nation. Consultants should understand the authority of operational First Nations to adopt and enforce laws, as well as the inapplicability of the Indian Act to land management, development, and environmental protection. The *Framework Agreement* changes the roles of the federal government, shifts liability for some matters to First Nations, increases the First Nation's need to exercise due diligence for development projects, and creates the vague obligation to harmonize laws. Consultants should comprehend these matters.

Figure 1. Key consultant competencies



Appendix D of this Guide lists the kinds of expertise and professional registrations that could be relevant to consultants or First Nations staff who are involved in environmental management. Note that new or different professional accreditations arise frequently, so the list should not be considered exhaustive.

Consultants preparing EMPs should recognize the capacity challenges faced by First Nations, including limited staff time, training, experience, or funding. An EMP drafted to meet the needs of a First Nation will differ substantially from one prepared for other governments. The bureaucracies of provincial and federal governments employ thousands of civil servants to administer laws and programs. First Nations cannot, and should not, seek to emulate such governance models. Despite the size of their programs, the efficiency and effectiveness of senior governments in protecting environmental quality is often questioned, as are the wisdom and timeliness of decisions affecting the environment. Consultants should recognize these limitations of senior government approaches to environmental management and land governance, and prepare plans, policies, and laws that reflect the needs and capacity of First Nations and that achieve the goals of protecting and improving environmental quality of First Nations land.

Consultants that have experience and knowledge of environmental planning on reserves should be ready to learn about local conditions and to prepare recommendations that are specific to the community. Sometimes, having extensive experience can limit the ability to see and respond to local conditions, particularly if the consultant takes a "template" approach, in which methods used elsewhere are assumed to be appropriate in a new circumstance. A First Nations should ensure that the firms invited to bid on the EMP are ready to learn about local conditions and to be flexible and creative in developing responses to identified issues.

Some First Nations have been approached to begin work on EMPs before their land codes are formally in place. Preparing an EMP in the absence of an adopted land code creates several challenges, including:

- Presupposing or attempting to predict land governance, legislative, and management processes before they are approved by the community,
- Assigning resources to preparing an EMP before budgets for implementing the land code have been created,
- Lands and environmental staff or consultants have yet to be hired to help direct the implementation of a land code and to participate in preparing the EMP,
- Lands offices that can direct the implementation of a land code have yet to be organized, and
- This approach bypasses the Request for Proposals process (discussed in the following section of this Guide), thereby favoring a firm that may not be equipped to provide the appropriate knowledge or expertise to prepare a useable final product.

For these reasons, it is advisable for First Nations to await adoption of their land codes before initiating the preparation of EMPs.

If a First Nation wishes to retain a consultant known to them, the First Nation should not assume that the familiar firm is necessarily qualified to prepare an EMP. If the First Nation proceeds

with a "direct award" to a consultant, it is a good idea to request a written work program, budget, list of deliverables, and schedule for the EMP, and to sign a contract for conduct of the work. Such a work program could be a simplified version of the information expected in a response to a Request for Proposals.

E.3. Preparing consultant Requests for Proposals

The accepted method of selecting a firm to work on a challenging project is to issue a Request for Proposals (RFP). A First Nation's RFP for preparing an EMP should contain the following information:

- A clear and detailed description of the community, why the EMP is needed, and the scope of services being sought,
- A list of available the First Nation's reports, studies, maps, and plans that could be useful to preparers of an EMP,
- A description of the deliverables expected (e.g., materials for community presentations, hard copy and digital versions of the draft and final EMP, mapping, lists of references, etc.),
- Expected start and finish dates, and any specific deliverable deadlines in between,
- The preferred credentials of bidders (such as registration in the Canadian Institute of Planners, experience with First Nations, understanding of the *Framework Agreement*, knowledge of environmental planning principles, and familiarity with local conditions),
- Explanation of the criteria that the First Nation will apply in selecting the successful consultant,
- Statement of the available budget for the work,
- A list of specific information the consultant should include in the proposal (typically the company background, experience conducting similar projects, experience working with Developmental or Operational First Nations, approach to be taken to preparing the EMP, list of specific tasks, credentials of staff to be involved in the project, schedule, budget, and list of references),
- Who to contact in the First Nation if the consultant has questions about the RFP, and
- A clear description of when the proposal is due (time and date), where it is to be delivered, and how it is to be provided. A First Nation may desire electronic proposals only, hard copy only, or a combination. Explain that the First Nation will not consider late proposals or proposals that lack required content.

An example of a potential RFP is presented in Appendix E of this guide.

Several First Nations staff should review the draft RFP to ensure that it correctly describes the nature of the work desired, is clear, and is free of errors.

The final RFP should be sent to the selected candidate firms with a request that the firms confirm receipt of the RFP. Mail, courier, or email can be used to distribute the RFPs. It is often advisable to accompany the RFP with a brief letter from the Chief, a Councillor, or Lands Governance Director, addressed to the candidate firm and inviting submission of a proposal.

Within five days of receiving the RFP, bidders should be required to inform the First Nation about whether or not they will submit a proposal. (If a First Nation learns that too many firms will not be bidding, it may be appropriate to invite additional firms to bid.)

In responding to questions from bidders, a First Nation should exercise care to not provide "inside information" or inaccurate answers that could skew the selection process. Governments often require questions to be submitted in writing, and responses to be circulated to all bidders. This formal approach may not be needed by a First Nation in responding to questions, but responses to consultant contacts during the bid process need to be precisely worded. All consultant questions should be routed to a single knowledgeable First Nations staff member, so that the answers provided are consistent.

E.4. Selecting consultants and managing the subsequent work

Well before the proposal deadline is reached, the First Nation should begin planning the consultant selection process. Key participants in selecting a consultant need to be available in the interval after proposals are received to avoid delays and to ensure that consensus is reached on the preferred firm.

The following steps should be followed in selecting the winning proposal.

- When proposals are delivered, they should be date-stamped. If proposals arrive by email, the digital files should be preserved to record the date and time of delivery.
- Copies of the proposals need to be provided (hard copy or digital) to those who will participate in the review. The time when the reviews are to be completed should be conveyed to the reviewers.
- It may be helpful to distribute a table containing selection criteria to guide the reviewers, and to help the reviews to compare their perceptions of the quality of the proposals by using a common set of criteria. The following criteria might be applied to evaluating EMP proposals:
    - Credentials of the study team (education and experience),

- Familiarity with EMPs or similar environmental planning documents,
- Familiarity with the *Framework Agreement*,
- Experience working with First Nations (particularly the specific First Nation preparing the EMP, as well as other operational First Nations),
- Understanding of local environmental issues,
- Logic and completeness of the list of tasks to be completed,
- Completeness of the list of deliverables (as contained in the RFP, plus other options proposed by the consultant),
- Level of involvement and proposed communication with First Nations staff,
- Nature of the community engagement proposed,
- Level of effort (number of days or hours) of qualified staff devoted to the project,
- Budget (amount, value-for-money, explanation of the basis of the estimates),
- Clarity of the proposal, which indicates the likely readability of the EMP, and
- Evidence of the quality of the consultant's work (references, examples, testimonials, etc.).

- To allow each reviewer's ratings to be compared, a simple score (1 to 5, high-medium-low) should be assigned to each criterion. The scoring table also should provide room for reviewers to write comments and observations.
- Ideally, the reviewers should meet to discuss the proposals. When the reviewers select a preferred consultant (or a short list of finalists), one person should be assigned to contact the references provided. Questions for the referees should pertain to the quality of work, communication skills, and other matters relevant to preparing an EMP.
- The First Nation should contact the winning firm and work out administrative details of the work (billing methods, meeting dates, reporting relationships, etc.). If a First Nation is experienced and comfortable preparing contracts, the First Nation should draft an agreement containing specific requirements and conditions associated with the EMP project should be drafted for consideration by both parties. If a First Nation does not wish to prepare the contract, the consultant should be requested to draft a contract for review by the First Nation. The contract should specify the deliverables, start and finish dates, total cost, and billing and payment procedures. The approved proposal prepared by the consultant may be appended to the contract. The contract should contain a clause that specifies the conditions under which the project can be terminated.
- When the First Nation is certain about the consultant to be hired, letters should be sent to the unsuccessful bidders. The First Nation should be prepared to

provide a "debriefing" to the other firms, explaining the strengths and weakness of the proposals, and why they did not win the work.

- Preparing an EMP should be a collaborative process between the First Nation and the consultant. Nonetheless, standard project management practices should apply. The First Nation's project manager should obtain answers to the following questions as the EMP is prepared.
- Is the work proceeding as described in the proposal?
- Does the consultant communicate regularly and effectively with First Nations staff and others?
- Are changes to the work program required to respond to new circumstances? Is the consultant willing to exercise necessary flexibility?
- Does the consultant obtain approval for changes before undertaking new work?
- Are the invoices clear, and are they consistent with the effort expended?
- Are the staff assigned to the project the same ones named in the proposal?
- Do the deliverables meet expectations?

F. DETERMINING REASONABLE COSTS OF PREPARING EMPs

A common question is, "how much does it cost to prepare an EMP?" As could be expected, the answer is, "it depends." The following conditions affect the amount of effort and associated cost of preparing an EMP.

- How much environmental work has been conducted on First Nations land before starting an EMP? If Phase I, II, and III Environmental Site Assessments (ESAs) have been completed, a First Nation should have a good idea of the extent of contamination on its reserves, and potential remediation options. Without such information, it may be difficult to know the presence or extent of contaminants, and whether such contamination constitutes an environmental issue to be included in the EMP.

- Other studies that could support an EMP are environmental inventories, habitat studies, land use plans, economic development plans, surveys of community opinions and values, and emergency response plans. If these, or similar, documents are up-to-date and relevant to a First Nation with a new

Land Code, a consultant can use that information to support initial stages of the EMP.

- How complex are environmental and land use conditions on a First Nation's land? Some reserves feature a variety of industrial, residential, commercial, resource extraction, agricultural, and other uses. Other reserves support only a few uses. Complex land use typically calls for an EMP that addresses many topics, and may require assembly of much information from many sources. Where future land uses occur, preparing an EMP may be simpler and less costly.
- How severe are the environmental issues facing a First Nation? If a First Nation has a history of challenging environmental problems, the preparers of an EMP may need to spend time identifying the extent of the issues and the range of potential responses. With fewer environmental challenges, less effort will be required in developing an EMP.
- What level of detail is sought in the EMP? An EMP should be considered a plan for future action, and so can remain a reasonably simple document that establishes goals, directions and policies. Some First Nations have used the EMPs to provide detailed operating specifications for various activities on their reserves. The more detail that is contained in an EMP, the more it will cost to prepare it (unless the detail is a template from other sources).
- Where is the First Nation's land located? Remote communities face higher costs for many thing, including retaining consultants to work on an EMP. Communities near urban centres may have little trouble finding consultants with suitable qualifications, and travel costs should be minimal. For communities far from cities, however, travel and accommodation costs can form a substantial portion of EMP budgets.
- What level of funding has been provided to prepare the EMP? Although it is a bit backwards, the cost of preparing an EMP may be determined by the amount of funding INAC provides for such work. For example, several years ago the British Columbia region of INAC earmarked specific fund limits for preparing EMPs. Not surprisingly, the amounts provided by INAC formed a significant portion of the costs incurred by First Nations to prepare EMPs under that program.

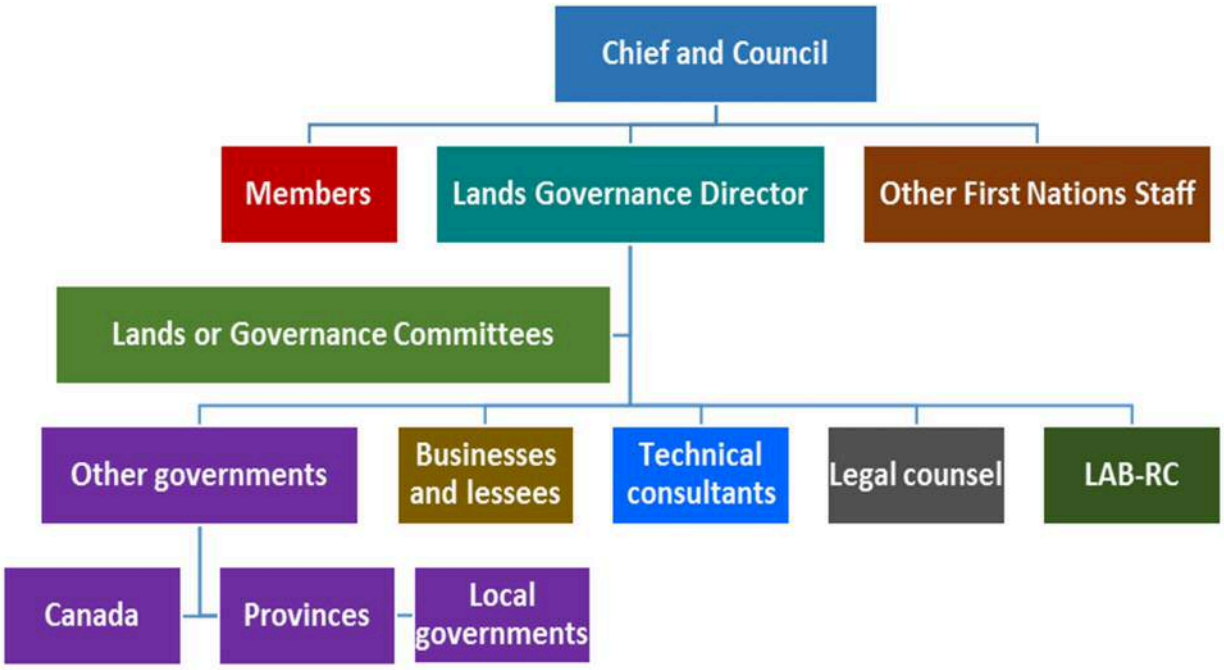
With all of those caveats, how much should a First Nation budget to prepare an EMP? Every First Nation should plan on community involvement, technical studies, and legal review of its EMP. Including those tasks, a "simple" EMP, with relatively few issues and associated policies, could probably be prepared for less than $100,000. For "average" EMPs, with specific policies and action items for reserves with a mix of land uses, a budget of $100,000 to $150,000 would be appropriate. Larger budgets should be anticipated for EMPs that are more complex. If ESAs or other environmental investigations are required to support an EMP, the costs could easily exceed $250,000.

G. ORGANIZING THE EMP PARTICIPANTS

The success of a plan as broad as an EMP requires involvement of many people and organizations. Figure 1 shows the variety of bodies that should be engaged in the EMP. The roles and responsibilities of the various parties will vary with the nature of issues to be addressed in the EMP, the organization of the First Nation, and the relationships among the potential participants.

More information on EMP organization can be found in the LABRC courselet at http://www.labrc.com/public/courselet/EMP_Preparation_Courselet_Final/player.html

Figure 2. Participants in preparing and implementing an EMP



As an aid in establishing how these parties will participate in preparing and implementing an EMP, Table 1 lists the main responsibilities of key participants. The identified roles are just suggestions; a First Nation may decide on different participant responsibilities.

Table 1. Potential roles for EMP participants

Body or organization	Role in Environmental Management Plan
Chief and Council	» Main First Nation decision maker and accountable authority that approves and adopts the EMP, laws, regulations, and policies » Approve work programs and budgets » Endorse government-to-government agreements
Lands Governance Director	» Liaison with Chief and Council » Prepares work programs and staffing plans before Environment Manager is hired; supervises Environment Manager » Coordinates interdepartmental relationships » Guides selection, hiring, and management of consultants
Environment Manager (If a First Nation has no Environmental Manager, the Lands Governance Director assumes these roles.)	» Oversees preparation and implementation of Environmental Management Plan » Prepares detailed implementation procedures » Prepares annual work plans and budgets » Implements elements of Environmental Management Plan » Coordinates community outreach and education, or supports staff and consultants in that role » Communicates with other government agencies » May deliver some environmental services (e.g. monitoring, restoration or environmental assessments)
Lands or Governance Committee (If a First Nation has no Lands Committee or equivalent committee, the Lands Governance Director assumes these roles.)	» Identifies environmental issues and responses » Participates in preparation and periodic review of the draft Environmental Management Plan » May assist in facilitating community consultation on the Environmental Management Plan » Makes recommendations to Chief and Council on the final draft of the Environmental Management Plan » Plays a key role in the ongoing implementation of the Environmental Management Plan
Other First Nations departments	» Support elements of Environmental Management Plan that are relevant to their mandates » Share information, and collaborate with staff of the Lands and Environment Departments

Community members	» Contribute knowledge about lands and resources » Articulate environmental values of the community » Help identify environmental issues and suitable responses » Discuss and validate responses to environmental issues » Discuss and comment on draft Environmental Management Plan » Approve laws for enactment as per Land Code procedure » Understand, support, and comply with environmental laws, regulations, and policies
Elders	» Can share in-depth understanding of traditional ways and resources » Familiar with the history of changes in environmental conditions on reserves » Understand cultural practices and values associated with environment and resource use » Enhance the value and legitimacy of the EMP for other community members
Consultants and legal counsel	» Provide technical support to First Nations staff in preparing and implementing the Environmental Management Plan » Design and conduct specialized studies (ESAs, risk assessments, emergency response plans, economic analysis, urban design, land use plans, etc.) » Draft First Nations' laws permitted by the *Framework Agreement* and authorized by the EMP
Lease holders or other on-reserve businesses	» Review and comment on draft Environmental Management Plan and laws » Understand and comply with environmental laws, regulations, and policies
Other First Nations and First Nation organizations	» Share approaches to environmental planning and management » Provide mutual support for preparing and implementing EMPs » Collaborate on multi-First Nation initiatives related to environment and the *Framework Agreement*
Land Advisory Board-Resource Centre	» Provide technical support and information and guidance materials on environmental planning and management » Provide examples of environmental plans and laws adopted by other First Nations
Provincial agencies	» Advise on the use and effectiveness of provincial environmental programs, policies, laws, and regulations. » May be contracted to provide specific services to a First Nation » Monitor and enforce environmental and other laws on provincial lands outside of reserves » Collaborate with First Nations on management of water and other "shared" resources » Source of regulations and standards that a First Nation may adapt

Indigenous and Northern Affairs Canada	» Source of funds for developing and implementing a Land Code, EMP, and laws » Applies Indian Act sections not affected by the *Framework Agreement* » Provides information on past environmental issues on the reserve lands » Fulfills responsibility to manage past environmental issues on reserve lands » Provides courses and other training and capacity opportunities
Other federal agencies (DFO, Health Canada, etc.)	» Responsible for enforcing federal laws on reserves (e.g., Fisheries Act, Migratory Birds Protection Act, Canadian Environmental Protection Act, Pest Control Products Act) » May continue to deliver services on reserve, consistent with agency mandates and authority » Conduct environmental assessments under Canadian Environmental Assessment Act during transition period, and in specific circumstances thereafter » Source of regulations and standards that a First Nation may adopt
Municipal and regional governments	» Share local experience responding to environmental issues » Negotiate agreements with First Nations for provision of services or environmental support (e.g., solid waste management, sewer and water, building inspection, land use planning) » Build mutual understanding and support for improving environmental quality » May collaborate with a First Nation in preparing and implementing an EMP, Official Community Plan. » May consult with a First Nation as local government prepares community plans, regional plans, or servicing plans, or makes major land use decisions. » May collaborate with First Nation on management of shared services (e.g., solid waste, water, and sewer) and resources

H. PREPARING THE EMP

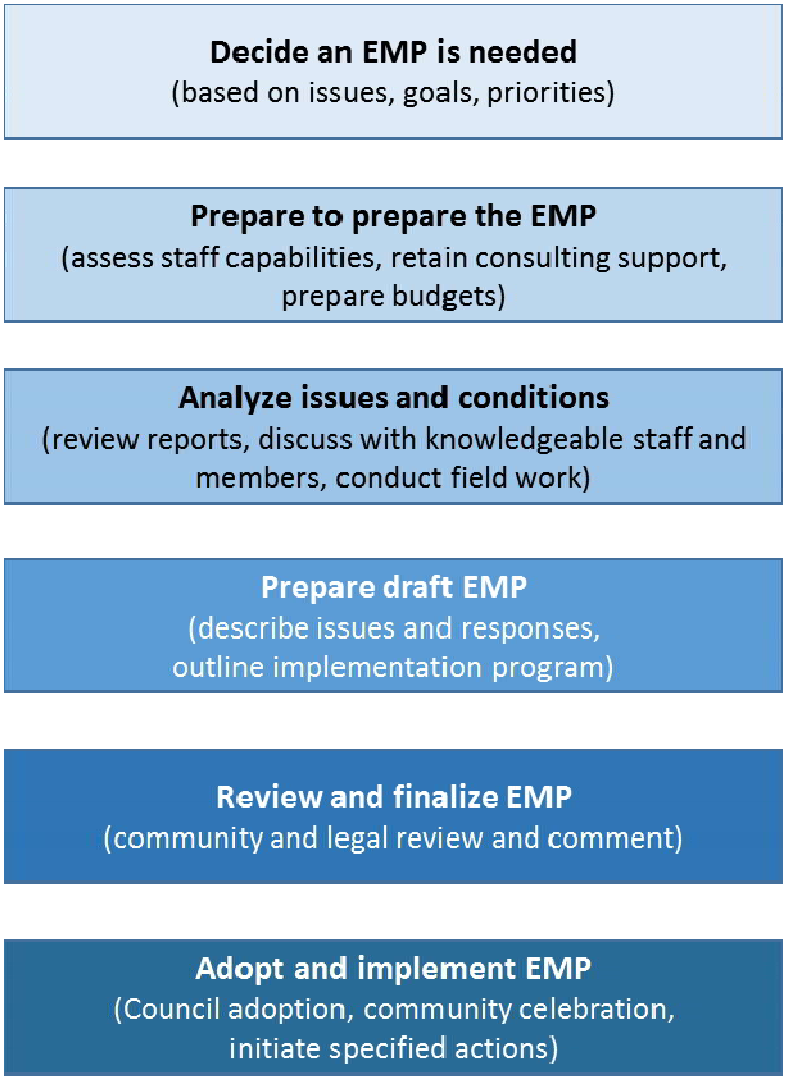
LABRC Courselets (which can be accessed using the link below) provide information about how to prepare an EMP:

[http://www.labrc.com/public/courselet/]

This report elaborates on the courselet's directions for preparing an EMP.

Figure 3 outlines the main steps involved in planning for, and preparing, and EMP. Note that a First Nation may decide that some of the steps can be skipped or amended to suit local conditions. More detail is provided on EMP preparation in the text following the figure.

Figure 3. Main steps in preparing an EMP



H.1. Identifying conditions and issues

Answering the following questions about environmental conditions and associated issues on reserves will help prepare a First Nation to develop its EMP.

- What environmental conditions on reserve have been documented by past studies?
- What environmental information did Indigenous and Northern Affairs Canada (INAC) collect before the First Nation adopted a Land Code? Has that information been provided to the First Nation?
- Did INAC effectively respond to past environmental issues on reserve lands? What is INAC's plan to remedy or monitor those issues?
- What environmental issues are present on First Nations land? Are these issues important in the community?
- How are the identified environmental issues being managed? What environmental issues are not being resolved?
- What environmental issues are likely to arise as a First Nation implements its Land Code? What environmental issues may be raised by future development on First Nations land?
- What provincial and federal environmental regulations presently apply on the reserve? Do regulatory gaps exist? Are existing regulations effective in managing environmental issues? What would be the implications of adopting or adapting provincial regulations on reserve?
- How familiar are the First Nation staff members with environmental issues and responses?
- What Band Council Resolutions and policies have Chief and Council adopted with regard to the environment?
- How do the operations or mandates of First Nations departments (e.g., housing, public works) affect the environment?
- What does the community's Land Code or Individual Agreement say about the environment?
- With answers to these questions in hand, the First Nation and its consultant can refine the work program for preparing the EMP.

H.2. Engaging the community effectively during EMP preparation

It is crucial that the community be involved throughout preparation and implementation of an EMP. During preparation of the EMP, community members and businesses can bring valuable information and insights to the planning program. When the EMP has been adopted, those groups must understand and support environmental management and land governance. It has been said that without involvement there is no commitment, so a broad range of groups must be involved in preparing the EMP.

Through their Land Code processes, Operational First Nations will have experience organizing community meetings, explaining complex information, and eliciting input from members. A First Nation should use techniques that proved effective in their community for reaching the

membership to explain why an EMP is needed, obtain input on environmental issues requiring action, and build support for adopting and implementing the EMP.

A First Nation should consider community meetings, workshops, open houses, and surveys to engage members in the EMP effectively. Group-specific meetings (e.g., youth, elders, businesses) may be useful, too.

H.3. Intellectual property and Aboriginal Traditional Knowledge

The Assembly of First Nations website provides the following definitions:

"Aboriginal Traditional Knowledge (ATK) is knowledge owned by Indigenous peoples which differs from nation to nation and is a key component to their culture. ATK has traditionally been protected by the community on a collective basis and is subject to the context in which it is being used."

"Intellectual Property is the legal ownership of a unique creation", usually by an individual.

When, for instance, elders provide information about environmental conditions or cultural practices, they are sharing ATK. This information may be considered intellectual property, even though the information is held by a group rather than an individual. Because an EMP will be a public document, a First Nation should ensure that confidential ATK is not compromised by preparation or release of the EMP.

A First Nation will need to decide whether obtaining ATK for use in environmental management planning requires payment of a financial benefit to the elders sharing their knowledge. It is often traditional protocol to request cultural information from elders by way of tobacco and, if they agree to participate, provide compensation via honoraria or some other method. Is payment for ATK also appropriate if the information is used to benefit the First Nation itself, as in an EMP? The approach to ATK compensation should be based on precedents in the First Nation, the nature of the information being shared, and the circumstances of elders involved.

First Nations should consider the following points when determining how to manage issues associated with ATK:

- Cultural features or activity areas that are considered sensitive or vulnerable to disturbance should not be shown on published maps. An EMP can create policies and management strategies that do not put the integrity of such sites at risk.
- An EMP does not require preparation of a Traditional Use Study (TUS) or similar examination of cultural features, and neither should an EMP be considered equivalent to a TUS. However, if such cultural research has been prepared for other projects and is available for examination, it should be reviewed during preparation of the EMP.
- An EMP's implementation section may call for future cultural studies that would fill gaps, increase understanding of cultural features, and guide management actions. TUS, archaeological, or other cultural studies can be challenging and costly to prepare. Such studies are often conducted in support of EAs of major projects affecting First Nations land. The EA section of an EMP may specify that cultural effects of proposed projects should be included in the scope and design of assessments.

Each First Nation preparing an EMP should determine how it wishes to handle the issue of ATK, elder involvement, and management and protection of culturally important areas and activities.

H.4. Identifying topics to be included

Aside from the two topics required by the *Framework Agreement* (environmental assessment and environmental contamination), a First Nation should determine what environmental issues need to be addressed in the EMP. Important environmental issues may be identified by community members, by staff, or as the result of technical studies, such as ESAs or EAs.

Examples of EMP content can be seen in the Tables of Contents for two adopted EMPs presented in Appendix A.

"Environment" is a broad concept, and associated issues generally include human and natural environments. For the purpose of preparing an EMP, some examples of environmental issues are:

- Risk of fuel spills from storage tanks or from trains or highways crossing a reserve,
- Contaminated runoff from industrial or agricultural operations,
- Invasive species (plants or animals),
- Electromagnetic fields from transmission lines,
- Poor solid waste management, resulting in human health risks or reduced community aesthetics,
- Air quality effects of woodstoves, industrial emissions, and transportation, including dust from roads and construction,
- Effects of groundwater contamination on drinking water quality,
- Reduced fish or wildlife habitat quality caused by human activity,
- Effects of flooding or increased risk of flooding on communities and businesses,
- Increased risk of "interface fires" where housing encroaches on forests,
- Health and other effects of inadequate liquid waste management,
- Poor water quality (surface or groundwater) caused by on-reserve or off-reserve human actions,
- Soil erosion effects on land productivity, or slope stability risks to public safety,
- Dumping of contaminated soil on reserves,
- Pests issues (e.g., rats in landfills, flies from agricultural operations) or
- Land development that does not adequately consider or protect the environment.

This list is only a limited sample of the hundreds of potential environmental issues that may affect reserves.

Environmental issues should be described in specific terms, and identify causes, not just symptoms. Such descriptions will be helpful in developing responses to correct the root causes of environmental problems. For example, instead of describing an issue as "Poor water quality," it is better to say "Discharge of oil-contaminated runoff into Jones Creek during heavy rainfall."

The number of issues to be included in the EMP should be kept within reasonable limits. Many issues may be identified by the parties involved in the EMP, but not all of them are necessarily environmental or suitable for inclusion in the document. It may be possible to combine related issues into a single item, or to deal with issues in other ways (such as a simple change in Band procedures or cleanup of a small area of dumped rubbish).

As a guideline, a First Nation should strive to keep the number of issues in an EMP between, say, five and twenty. Of course, a First Nation can identify as many issues as it wishes in an EMP, though as the number of environmental issues grows, the effort required to manage them and the associate costs also expand. As a common maxim says, "Long lists don't get done". For examples of the numbers of environmental issues contained in EMPs, please review the example Tables of Contents in Appendix A.

H.5. Off-reserve environmental issues

It is not uncommon for off-reserve conditions or human actions to have environmental effects on reserve land, air, or water. Examples of such cross-boundary issues include air emissions from industry or rail traffic, groundwater or surface water contamination from agriculture or commercial activity, and flooding resulting from poor "upstream" drainage management practices.

A First Nation's authority to manage its lands and environment under the *Framework Agreement* applies only to reserve lands. Hence, policies or regulations that are implemented by a First Nation cannot be applied off-reserve. An EMP, nonetheless, can address such issues in several ways, including:

- Documenting that an environmental issue exists and that its likely cause is off-reserve activities,
- Identifying the agencies involved in regulating the off-reserve activity (i.e., provincial environmental or health departments), and
- Calling for dialog between the First Nation, the off-reserve regulator, and, potentially, the person or company causing the environmental issue to attempt to develop a suitable response.

If the off-reserve environmental issue pre-dates a First Nation's Land Code or if federally-regulated resources are affected (e.g., fish, species at risk), the EMP can specify that Canada should fulfil its responsibility to participate in resolving such issues or to compel other authorities to take action. Provinces or local governments may be responsible for regulating off-reserve land uses, so those bodies may need to participate in controlling harmful activities.

A First Nation should invite regulators of off-reserve lands or waters to be involved in preparing the EMP. Through building these relationships, a First Nation will be in a better position to resolve environmental issues caused by off-reserve activities.

If off-reserve developments are anticipated to affect the environmental conditions on reserve, then an EMP should identify those potential effects and recommend suitable responses. Communication between the First Nation and regulators or proponents of the off-reserve development is a necessary part of managing such issues. For instance, a First Nation noted that bridge construction upstream of its reserve affected erosion rates where the river crosses the reserve. Through early engagement with the bridge planners and designers, the erosion problems may have been avoided.

H.6. Developing appropriate responses to identified environmental issues

It is not enough to identify problems in an EMP. Solutions, too, need to be proposed. After preparing a list of issues, a First Nation and its technical advisors should consider the best response to each issue.

Laws are necessary when enforcement and legal power are needed to respond to an issue. The *Framework Agreement* specifies that environmental assessment and environmental protection regimes will be implemented through First Nations laws. These regimes should include such measures as outreach, policies, and procedures. Except for environmental protection and environmental assessment, most issues identified in EMPs can be managed without laws.

The following methods can be applied in responding to many environmental issues:

- Policies to be adopted by a First Nation, which might identify how Band services will be delivered or how members are expected to behave with regard to the environment,
- Applying accepted government or industry guidelines or standards (for, say air or water quality or fuel storage),
- Adopting best management practices or standard operating procedures, typically applied to such activities as operation of sewer and water systems, construction methods, solid waste management, and agricultural operations,
- Applying traditional knowledge or practices in ways that avoid or reduce identified environmental problems,
- Using education and outreach to explain the EMP policies, actions, and expected changes in behaviour to correct environmental problems, and
- Drafting laws for issues requiring the ability to enforce compliance.
- The responses selected by a First Nation will depend on the nature of the environmental issues, environmental or human health risks, willingness of community members to accept proposed responses, and capacity of the First Nation to take selected actions.

A First Nation should collaborate with other First Nations, jurisdictions, and government agencies as it develops responses to environmental issues. Staff of nearby municipalities may have experience managing issues of water quality, solid waste management, or land development that could be adapted for use on a First Nation's land. Provincial or federal agencies, too, may be able to suggest ways of dealing with identified environmental issues. Two or more First Nations may be able to collaborate in developing and implementing responses to similar environmental issues.

Involving other agencies during the development of the EMP may also build relationships that will prove valuable as the plan is implemented.

To manage strictly technical environmental topics (such as fuel storage tanks or wastewater systems), INAC suggests applying standard operating procedures (SOPs). Such SOPs identify whether an issue requires adherence to a regulation (provincial or federal) involving a "must do" checklist of actions. For topics that are non-technical or that are not directly subject to regulation (such as farming or tree removal), best management practices (BMPs) can be used to describe accepted approaches to a specific issue.

H.7. ISO-based Environmental Management Systems

The International Standards Organization (ISO) was formed in 1946 to establish uniform standards for industrial products. ISO has evolved into a Geneva-based "independent, non-governmental international organization with a membership of 162 national standards bodies. Through its members, it brings together experts to share knowledge and develop voluntary, consensus-based, market relevant International Standards that support innovation and provide solutions to global challenges."

The Canadian Standards Association (CSA), formed in 1919, is an ISO member organization and performs similar functions. The ESAs conducted on First Nations' land typically comply with approaches to identifying contaminants published by CSA. In 2014, CSA had more than 1,600 employees and annual earnings exceeding $183 million.

Though primarily focused on establishing standards for manufactured goods, ISO and CSA also have developed standard procedures for activities undertaken by businesses and organizations. The standards marketed by CSA that apply to activities include:

- Environmental Management Systems (ISO 14001)
- Greenhouse Gas Management and Carbon Accounting (ISO 14064)
- Energy Management Systems (ISO 50001)
- Organizing Sustainable Events (Z2010).

To use these systems, an organization must purchase materials from CSA. People interested in learning about CSA-based EMS can take courses offered by the organization, potentially leading to certification.

An Environmental Management System (EMS) should not be mistaken for an EMP. For example, EMSs used by corporations may reduce energy use, generation of waste, or material used in shipping products. Hence, an EMS could be useful as a recommended response to certain environmental issues identified in an EMP. For instance, an EMP might identify

excessive use of energy and paper in First Nations administration as an environmental problem, and suggest the use of an EMS to develop solutions. The First Nation could then purchase the guides and services from CSA, or enroll a staff member in EMS training. Consultants also offer CSA-linked services.

H.8. Ensuring the EMP contains appropriate levels of detail

Some EMPs contain extensive detail in the form of "standard operating procedures" or similar instructions for day-to-day activities on a reserve. Such plans also often include a "component environmental management plan" for each identified issue.

Other First Nations use the EMP as an opportunity to establish goals and objectives for environmental quality, organize and clarify the environmental issues they face, and specify future actions to be taken. Details may be contained in appendices that can be separated from the plan itself. These EMPs are a brief document meant to communicate the First Nation's environmental management program to members, businesses, and other governments.

Though there is no "right" or "wrong" approach to EMP content, some guidelines may be helpful. As a plan, an EMP should be considered a "road map" to future actions. The document should be clear and readable, avoiding excessive technical jargon, "legalese", or extraneous detail. Formats should be chosen that facilitate understanding and use of the EMP.

H.9. What the EMP should say about implementation

An EMP should be an implementation-focused document. This means that the EMP's content and presentation should facilitate implementation by answering such questions as, "what needs to be done," "when will these actions occur" and "who is responsible for the actions"?

The responses to the environmental issues identified in the EMP should be capable of being implemented by the First Nation or another responsible party. If organizations other than the First Nation are identified as responsible for actions, those bodies need to be contacted during preparation of the EMP to discuss and confirm their roles in implementation.

The EMP should propose a schedule or sequence of actions that respond to identified issues. Some actions need to be taken first, either because the issues are more pressing or because the actions provide groundwork for later steps. All of the issues contained in an EMP should be important, so referring to some issues as "high priority" may be misleading. "Sequence" is a better term to apply to creating an implementation schedule.

For some issues, further study may be required to understand the extent or nature of the problem or to determine the best management response. In such cases, EMP implementation may specify investigations to be conducted before a response to the issue itself can be prepared. For example, if only a Phase I ESA was conducted before a Land Code was adopted, a First Nation may not know the extent of potential contamination on a reserve. In

response, the EMP may recommend that a Phase II or III ESA be completed to support future decisions about remediation or other actions.

H.10. Enforcement and adjudication of laws

The *Framework Agreement* anticipates the need to enforce environmental protection laws, and establishes a baseline for standards and punishments, saying:

24.3 The First Nation environmental protection standards and punishments will have at least the same effect as those in the laws of the province in which the First Nation is situated.

Clause 19.1 of the *Framework Agreement* also discusses the punishments that Land Code First Nations may use to achieve compliance with their laws.

First Nations regularly ask about reasonable and effective ways of enforcing their environmental laws (not just environmental protection laws), and adjudicating violations. First Nations across Canada have adopted a variety of approaches to law enforcement and adjudication. This guide provides only general guidance on the topic.

Unless a First Nation has already formulated methods of enforcing its laws, the EMP need not specify such actions. Rather, the EMP can declare that a First Nation will develop an enforcement and adjudication regime after considering findings of LABRC studies or some other appropriate process.

A First Nation's legal counsel may recommend using enforcement and adjudication processes that can be delivered by the First Nation or that represent current practice and are accepted in local, provincial, or federal courts. A First Nation should note that going to court is expensive, slow, and harmful to relationships among the litigating parties. Particularly for environmental laws, a First Nation's enforcement approach should emphasize the following measures:

- education and provision of information,
- persuasion,
- verbal and written warnings,
- administrative measures (such as stop work orders and seizure of goods),
- mediation,
- traditional cultural measures, such as Elders' committee hearings, or
- other means of attaining compliance.

Going to court should be a last resort. A First Nation may use the EMP to specify the general direction and approach to be taken in enforcing environmental laws.

I. ADOPTING AND IMPLEMENTING THE EMP

Plans are only useful if they are implemented. To make sure that the effort expended in preparing an EMP is not wasted, a First Nation needs to commit to an active—and long term—implementation program. Implementation begins with adoption of the EMP, and

continues until all of a First Nation's environmental goals and objectives are met, which could be a very long time.

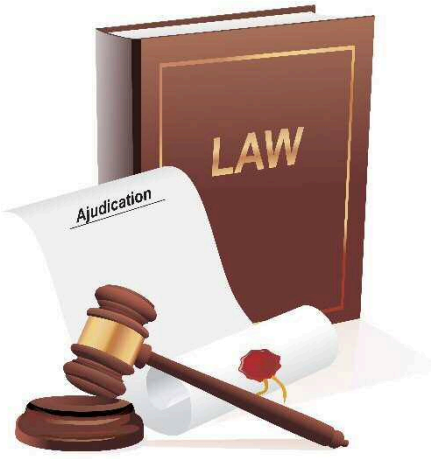
I.1. Adopting the EMP

A First Nations should take the draft and final EMP to the membership for review and discussion. When the EMP has been revised to respond to community concerns and is considered complete by a First Nation's advisory committee, it is probably ready to be adopted. Land Codes may contain sections specifying how documents such an EMP should be adopted.

If the Land Code does not specify how to adopt an EMP, several alternatives are available. Chief and Council could adopt the EMP through a Band Council Resolution or by simply voting to adopt the plan. Another course of action is to ask the membership to vote on the EMP, either at a community meeting or via a more formal ballot.

Regardless of the adoption method used, a First Nation should ensure that the EMP is formally recognized as a document endorsed by the community and Council. Such recognition will increase the plan's legitimacy as a guide to future actions and expenditures, and will reinforce a First Nation's authority to govern its lands and resources.

I.2. Drafting environmental laws



At a minimum, a First Nation will need to consider drafting laws dealing with environmental assessment and environmental protection (contamination). An EMP is likely to identify other issues for which laws are part of an effective response. The process of drafting laws should involve the First Nation and its technical consultant to specify what the laws should try to achieve. Legal counsel should be asked to draft laws that respond to the identified environmental issues, will be enforceable, are understandable by First Nations' membership, and will be useful in court.

The lawyer should be asked to review environmental laws adopted by other First Nations and those adopted by local governments and provinces. The approaches taken by such organizations or specific sections of their laws may be adapted for a First Nation's purposes. Care must be taken, however, to not just adopt a law from another jurisdiction because of precedent. Such laws may be ineffective, excessively bureaucratic, or expensive to enforce. It may be difficult or costly to monitor compliance or test effectiveness of others' laws as they apply to First Nations land.

Special care must be taken in drafting laws dealing with environmental assessment. The *Framework Agreement* specifies that a First Nation's EA law must be "consistent" with Canada's and the EA regime must be "harmonized" with those of the Provincial and Federal governments. Senior governments' environmental assessment processes are slow, expensive, and do not guarantee protection of the environment. These laws should not be mimicked by a

First Nation. Rather, an approach to environmental assessment should be developed that is consistent with the capacity of a First Nation to deliver, and that focuses on identifying impacts and mitigation measures honestly and efficiently.

The process of law drafting should include a review of similar laws in adjacent jurisdictions. It is usually wise to avoid creating laws on reserve that create substantially different legal requirements (either more permissive or more restrictive) than prevail in surrounding communities. Nonetheless, it is more important to have laws that meet the needs and circumstances of a First Nation than to be legally consistent with neighbours' laws.

I.3. Getting word out…Communicating the EMP

After adopting its EMP, a First Nation should make sure that others know about the plan. This communication is important for several reasons:

- The EMP can help make other governments, regulators, and others aware that the First Nation is actively exercising its authority to govern its lands,
- First Nation members need to understand, celebrate, and support the content of the EMP,
- Members and businesses must fully understand the plan and its content before they can be expected to comply with the new policies, laws, and regulations,
- By building community understanding of, and support for, the EMP, Chief and Council can more confidently implement the plan, and
- Businesses and developers that are active on reserves or that propose development on reserves should understand the environmental priorities, goals, and procedures established by the First Nation.

Communication methods should be selected that suit the target audience. For instance, to reach the entire community, a meeting or open house might be best. For specific groups, such as elders or youth, smaller group sessions often work well. To reach other governments or businesses, written communication may be appropriate.

A First Nation may consider preparing a brochure or similar brief summary of the EMP. Such a concise document provides an announcement of the plan and its main themes. For some audiences, such summary information may be sufficient. The summary should provide the reader with instructions for obtaining more detail if desired.

The communication program should be designed as soon as the EMP is adopted, with implementation to proceed quickly thereafter. The First Nation may conduct the outreach and materials preparation independently, or it may choose to involve the consultant involved in the EMP to support preparation of the summary and delivery of the EMP "message" to the various audiences.

Some First Nations have found that educating school children about environmental management not only builds support among youth, but also influences parents. Explaining the EMP purpose and content either in school classrooms or in First Nations youth groups can bring wide benefits.

I.4. Implementation--Phasing and organizing

Implementing the EMP will be a long-term, multi-year endeavor. The EMP itself should contain a strategy for implementation. After a First Nation adopts its EMP, it may need to refine the schedule for implementation, considering:

- Which actions need to be taken first,
- The parties (staff, consultants, lawyers, other governments) involved in such actions, and
- Availability of resources needed to take the needed actions.

The estimated cost of implementation will need to be consistent with funds available in each budget year. Federal and provincial governments occasionally announce funds for specific purposes. If these funding opportunities are consistent with EMP actions, a First Nation needs to be ready to submit an application to the relevant agency, often on short notice.

A few hints to implementing a plan can help ensure that the goals of the EMP are achieved.

a. Assign responsibility. The Lands Governance Director, Environmental Technician, or some other First Nation staff member needs to be assigned responsibility for implementing the plan. Without clear responsibility, the EMP is likely to sit on a shelf.

b. Recognize and overcome resistance. Opposition by individuals or groups can derail the plan. Do not underestimate this risk. Be aware of the sources and causes of opposition to the EMP, and find ways to respond. For instance, the EMP may call for changes to the operations of some First Nations departments, which may lead to staff resistance. The staff member(s) having primary responsibility for implementing the EMP should explain the EMP to other departments and explain that the plan has support from Council and membership. If compliance still is lacking, direct instructions from Chief and Council to the uncooperative staff may be needed. First Nations staff or Council also would need to address opposition to the EMP from community members or businesses.

c. Build alliances. Some groups or individuals may support the entire EMP, whereas others may care only about portions of the plan. Operators of domestic water utilities, for instance, may be most interested in sections of the EMP that deal with contamination issues, whereas the Economic Development Officer may care most about the environmental assessment process. It is important to cultivate relationships with single-issue groups as well as those with broader interests. A strong "constituency" for EMP implementation will pay many benefits.

d. Look for ways to achieve EMP goals through others' initiatives. Operational First Nations take action on a number of topics, including economic development, land use planning, housing, services, and training. If the goals of those initiatives are consistent with those of the EMP, seek ways of collaborating with other departments and staff on programs, outreach, regulation, or other activities. Mutual support can strengthen all initiatives.

e. Be prepared to adjust course. As plans are implemented, conditions will change and different ways of achieving specified goals may be identified. Not only will environmental conditions change, but organizational flux also will occur. Staff turnover, political change, shifting (or shrinking) budgets, and other events will affect implementation of the EMP. Be ready for these changes and do not be afraid to adjust the implementation program. The EMP is, after all, just a plan.

f. As the EMP is implemented, lessons will be learned about responding to the issues specified in the plan. It is reasonable to act on that new understanding, so flexibility should be built into the implementation program.

J. MONITORING PERFORMANCE AND IMPROVING THE EMP

At regular intervals (typically every five years), the EMP should be subject to monitoring and evaluation. Based on this performance review, the plan may be amended.

Both the plan and environment should be monitored. In monitoring the plan, several questions should be answered:

- How much effort has gone into the plan (staff time, consultant effort, budget allocations, purchases)?
- What has the plan achieved (meetings held, products completed, community support attained, laws adopted, field work conducted)?
- Are the issues identified in the EMP still current (have some previous issues been resolved and new issues arisen that are not included in the plan)?
- Are the actions proposed in the EMP still relevant (laws, outreach, best management practices, etc.)?

- Have the EMP's goals and objectives been achieved?
- The condition of the environment also needs to be included in the monitoring program by obtaining answers to the following questions:
- Have the environmental issues identified in the EMP been improved by plan actions?
- Have new environmental issues arisen since the EMP was prepared?
- How has the overall environmental quality of the First Nations lands changed since adoption of the EMP?
- How might a revised EMP address new or ongoing environmental issues?

With the results of the monitoring effort in hand, the First Nation can decide what amendments to the EMP are needed. In some cases, only minor changes may be required. In other circumstances, the vision, goals, issues, and responses may need thorough revisions. Such revisions should consider ways of improving the efficiency and effectiveness of planned actions.

Although a comprehensive review should occur every five years, improvements to the plan and its implementation should occur whenever required. For example, if a new environmental issue comes to light, a First Nation need not wait until the five-year review to respond. Depending on the severity of the new issue (e.g., threats to environmental or human health), a First Nation can develop and implement a specific response.

An EMP can be a wonderful tool for First Nations in improving the quality of their lands and communities. Preparing the plan can engage the community, encourage people to think about important issues, and empower First Nations members to take individual responsibility for their environment. Understanding and applying the suggestions presented in this guide can help First Nations to avoid known obstacles to preparing EMPs, making the planning experience more rewarding and productive.

APPENDIX A: EXAMPLES OF EMP CONTENTS

As an aid to First Nations in designing their EMPs, this Appendix presents the Tables of Contents for EMPs prepared by the Matsqui First Nation and the Sc'iȺnew First Nation. The contents show two approaches to the plans, the Matsqui's being more policy-based (environmental issue-response-action) and the Sc'iȺnew relying more on standard operating procedures. The examples identify the environmental issues determined by each First Nation to be important to their communities. Each First Nation that prepares an EMP will need to identify their own individual set of important environmental issues and responses to those issues.

Matsqui First Nation Environmental Management Plan

Sc'iɣ̓anew First Nation Environmental Management Plan

APPENDIX B: SAMPLE JOB DESCRIPTIONS

Environmental Manager

The First Nations environmental manager co-ordinates the components of the First Nation Environmental Management Plan (EMP).

Environmental managers must be able to identify and resolve a variety of environmental problems. Environmental managers will co-ordinate the efforts of operational staff, while working with Chief and Council, federal, provincial, and municipal bodies, developers, and others on a regular basis. They will need to understand political, social, legal, and economic issues, as well as aspects of environmental science and technology. Environmental managers will be expected to act as environmental leaders in their communities.

Duties:

- Oversee the implementation of the First Nation's EMP, including drafting laws deemed necessary by the EMP, Environmental Assessment, land use controls, sustainability initiatives, and environmental aspects of day-to-day reserve operations.
- Co-ordinate all aspects of environmental management on-reserve, including resource extraction, pollution reduction, waste management, development controls, environmental health, risk assessment, and remediation of contaminated sites.
- Serve as the administrator for environmental programs for the First Nation, including preparation of budgets, staffing plans, and capital plant.
- Oversee the issuance of permits, which may be prepared by the Environmental Technician.
- Review development applications and prepare summaries for Chief and Council.
- Co-ordinate compliance with, and monitoring of, environmental legislation.
- Oversee pollution control, pollution prevention, recycling programs, or other EMP components.
- Evaluate best management practices and emerging technologies and provide technical and general information to other First Nations staff, Council, and community members.
- Oversee auditing and reporting of environmental performance, providing results to internal and external bodies, as required.
- Manage enforcement, mediation, prosecution, and adjudication actions.
- Identify, assess, and reduce First Nations environmental risks and financial costs associated with environmental matters.
- Incorporate relevant aspects of environmental laws and policies (the First Nation's and others') and best management practices into First Nations operations.
- Develop environmental awareness initiatives for community members and political leaders.

- Assess and implement improvements to the First Nation's EMP.
- Coordinate First Nations Environmental Assessment (EA) processes, and First Nations participation in external EA processes. Roles may include may include determining whether an EA is required for a proposed project, defining project Terms of Reference, oversight during EA preparation, reporting to Chief and Council, organizing community involvement, reviewing EA reports, and coordinating monitoring of EA mitigation strategies and commitments.
- Provide environmental input to the development and amendment of land use plans and regulatory bylaws.
- Coordinate ongoing training for environmental staff in relevant fields of environmental management.
- Deliver environmental status reports and recommendations to Chief and Council.
- Develop and co-ordinate environmental purchasing decisions.
- Identify environmentally sound business opportunities.
- Coordinate contracts with consultants, lawyers, and other external support for services related to environmental management.
- Write environmental reports, monitoring studies, and state of the environment reports.
- Make presentations to municipalities, community, and environmental groups.

Qualifications:

A sound knowledge of scientific and management principles is needed. An effective environmental manager must understand problems and recognize areas for environmental improvement, and be able to communicate solutions to community members, political leaders, staffs of other government agencies, and the broader public. Familiarity with approaches to environmental issues, and the ability to work with a variety of individuals is important.

Environmental Technician

Reporting directly to the Environmental Manager, the technician undertakes operational activities required to fulfill the requirements of the Environmental Management Plan (EMP). Activities may include environmental sampling, data analysis, interpretation, reporting, and research. The Environmental Technician conducts site inspections, processes applications for environmental permits, and assesses compliance with laws, regulations, and policies applicable on reserve.

Duties:

- Conduct water, land, and air monitoring programs, reporting results to the Environmental Manager.
- Assist with the delivery of pollution control initiatives.
- Prepare samples for laboratory analysis, whether completed on or off reserve. Aid in interpreting and responding to findings of such analyses.
- Respond to enquiries about permits and regulations, and process applications for permits required by a First Nation's laws.
- Enter environmental data into databases and spreadsheets and carry out data analysis and interpretation.
- Prepare field reports, annual reports and draft staff reports on environmental issues.
- Ensure compliance with environmental elements of land use plans, zoning bylaws, and other regulations through onsite inspections, collection of data and evidence, issuance of citations for violations, and participation in prosecutions as necessary.
- Participate in the conduct of response to environmental emergencies.
- Assist staff with the enforcement of bylaws, legislation, and contaminant source investigations.
- Work with community members and businesses to protect the reserve from environmental contaminants.
- Promote community involvement in environmental management and carry out environmental educational initiatives.
- Assist with the planning of annual budgets and cost estimation for environmental initiatives.
- Provide input for the design and delivery of projects in the environmental program.
- Perform other duties as required

Qualifications:

Environmental technicians should have a firm understanding of environmental legislation and protocols for environmental monitoring, data collection, analysis, and reporting. Credentials that include certifications in relevant fields are desirable. Technicians should be comfortable working with community members, and be able to build effective working relationships with businesses. Environmental technicians should be able to explain specific issues clearly, and prepare reports in an effective manner.

APPENDIX C: REGISTRIES OF ENVIRONMENTAL PROFESSIONALS IN CANADA

First Nations seeking professional assistance in preparing and implementing EMPs may wish to contact professional associations to identify firms or individuals that are registered with those organizations. In some cases, online databases can be searched to identify people and companies with specific credentials and experience.

Note that the following list should not be considered complete; the databases and search services offered by the professional organizations change frequently. If a province is not listed here, registry and search options were not available at the time this report was prepared.

Professional planners:

Canada-wide: For a fee, Requests for Proposals can be posted on the Canadian Institute of Planners website. Details are at https://www.cip-icu.ca/Hire-a-Planner/Request-for-Proposals# .

Ontario: https://ams.ontarioplanners.ca/consultant/directory/

Manitoba: http://www.mppi.mb.ca/consultants-directory.asp

British Columbia: https://www.pibc.bc.ca/content/planning-consultants (site "under construction" in 2015)

Engineers and geoscientists:

British Columbia: https://www.apeg.bc.ca/Member-Directories

Manitoba: http://www.apegm.mb.ca/Directory.html

New Brunswick: http://www.apegnb.com/en/home/aboutus/findamember.aspx

Agrologists:

British Columbia: https://www.bcia.com/about-bcia/find-an-agrologist

Saskatchewan: http://www.sia.sk.ca/html/about/Consultant---Contractor-Database/index.cfm

Manitoba: http://mia.mb.ca/mia_registry.aspx

Ontario: http://oia.on.ca/find-member/

Alberta: http://aia.in1touch.org/client/roster/clientRosterView.html?clientRosterId=243

Biologists:

British Columbia and Yukon: https://professionalbiology.com/about/find-a-consultant

Alberta: https://www.aspb.ab.ca/member-roster

Quebec: http://www.abq.qc.ca/

Canada-wide: http://www.cseb-scbe.org/index.html (may need to contact the organization directly for register of members)

APPENDIX D: CONSULTANT OR STAFF CREDENTIALS FOR SPECIFIC ENVIRONMENTAL ACTIVITIES

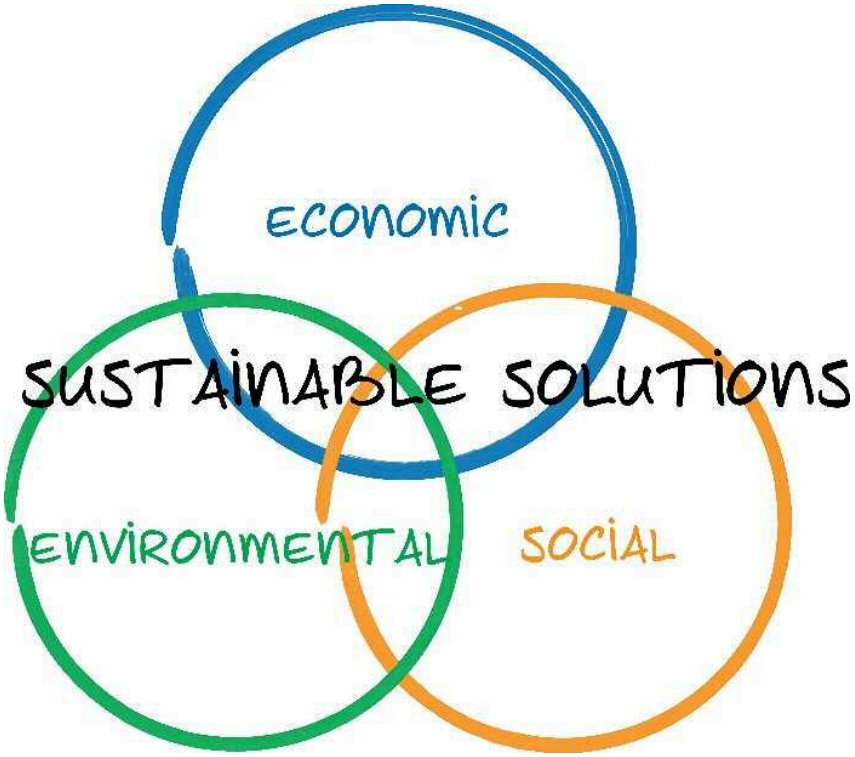
Topic	Fields of knowledge or training	Professional credentials
Environmental planning	Planning, various environmental sciences, data collection and report preparation	Registered Professional Planner (RPP); Member, Canadian Institute of Planners (MCIP)
Species at risk, habitat	Biology, ecology	Registered Professional Biologist (R.P.Bio.), Professional Biologist (P.Biol.), or related, Environmental Professional (EP) in relevant field; Certified Wildlife Biologist; Associate Wildlife Biologist
Contamination and remediation	Chemistry, risk management, engineering and geoscience, soil science	Member of Contaminated Sites Approved Professionals (CASP) Society; Professional Engineer (P.Eng.);
Water quality or management	Hydrology, civil engineering, public health, biology	Member, Canadian Water Quality Association; member, Canadian Association on Water Quality (CAWQ, ACQE); P.Eng. (civil), R.P.Bio., Certified Erosion Sediment Storm Water Inspector (CESSWI)
Wastewater	Sewer system and wastewater management	Holder, wastewater management certificate (provincial); P.Eng. (civil)
Soils, agriculture	Soil science, agrology	Professional Agrologist (P. Ag.), Certified Agricultural Consultant (CAC); Certified Agricultural Advisor (CAA); Certified Crop Advisor (CCA); Certified Professional in Erosion and Sediment Control (CPESC)
Trees in communities	Arboriculture	International Society of Arboriculture Certified Arborist (ISA Certified); Tree Risk Assessor Qualification (TRAQ); R.P.Bio., P.Ag.
Forestry	Forestry, geoscience, biology	Registered Professional Forester (RPF), ingénieur forestier (ing.f.); P.Eng., R.P.Bio.

Fish, fish habitat	Biology, ichthyology	Certified Fisheries Professional (CFP); Associate Fisheries Professional (AFP); R.P.Bio.; EP in fisheries
Land use, community design	Planning, urban design, architecture, landscape architecture	RPP, MCIP, licensed under a provincial architectural licensing authority; Member of provincial landscape architecture organization; LEED Accredited Professional (AP);
Community involvement	Planning, sociology, communications	International Association for Public Participation (IAP2); RPP; MCIP; Certificate in Communications (various institutions)
Mapping	Cartography, computer mapping, geography	Canadian Institute of Geomatics (CIG) Certification; ESRI Certification; Geographic Information System Certification (GISC); Information Mapping Certification; GPS and GIS Certification; Degree in relevant field

APPENDIX E: EXAMPLE OF CONTENTS FOR A REQUEST FOR PROPOSALS TO PREPARE AN EMP

- Introduction and context
  - » Description of First Nations community (name, population, area in hectares, location, summary of land uses on reserves)
  - » Governance structure relevant to the study (roles of staff, Chiefs and Council, lands or environment committees, etc. in preparing, adopting, and implementing the EMP. Identify who will manage the EMP project.)
  - » Why an EMP is needed (to identify environmental issues, develop responses, comply with *Framework Agreement*, guide future environmental management activities, etc.)
  - » Scope of services sought (describe what the consultant is to do, either design and prepare an entire EMP or provide specific services, such as collect and analyze environmental information or prepare maps and assemble the report)
- List of relevant reports, maps, etc. (list environmental reports that the First Nation can make available to the successful bidder)
- Deliverables (what products and activities should the consultant provide?)
  - » Draft documents describing environmental conditions and issues
  - » Maps showing location of environmental features and issues
  - » Presentation materials for community
  - » Number of copies of draft and final reports
  - » Numbers of meetings, community presentations, etc. to be held
- Schedule (start-finish dates, interim deadlines for products)
- Criteria to be used to select a consultant
  - » Quality of proposal
  - » Credentials of consultants
- Company background, size, resources, other relevant projects
- Team member education, training, experience, professional registrations
  - » Value for money
  - » Familiarity with EMPs, *Framework Agreement*, local conditions
  - » Other criteria
- Budget or budget range
- Information to be included in proposal
  - » Description of approach to the EMP
  - » List of tasks to be completed
  - » Description of deliverables

    - » Detailed table showing staff hours, fees, and expenses
    - » List of references (with phone numbers)
- Proposal due date (be very specific, listing date and time)
    - » State that late or incomplete proposals will not be reviewed
- Proposal format (how the proposal should be delivered)
    - » Hard copy (with First Nations delivery address and number of copies) OR
    - » Digital (describe format, e.g., MS Word, PDF, etc.)
- Questions and clarifications (provide the name and staff position of the First Nations person to be contacted for RFP questions and clarification, including email address and phone number)



Prepared for:

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Land Governance Director/Environmental Manager Environmental Governance Activities

The Lands Governance Director or Environmental Manager responsible for implementing provisions of environmental governance will be responsible for activities such as:

- Identifying topics requiring action associated with environmental governance
- Overseeing the drafting of laws
- Recommending regulations and policies to support the environmental governance actions
- Engaging community members, other First Nation departments and other government agencies during development of the Environmental Management Plan and preparing environmental governance instruments
- Managing intergovernmental relations
- Implementing the adopted laws, policies, regulations, and other environmental governance measures
- Hiring environmental consultants
- Hiring appropriate legal council
- Coordinating the strategic approach to land governance.

Law Making Guide: *Framework Agreement* First Nations

First Nations Land Management Resource Centre Inc. | June 2010

TABLE OF CONTENTS

INTRODUCTION

The purpose of this workshop is to provide some guidance to First Nations in developing and drafting laws. The power to make laws is limited to governmental authorities and, in general, the overall approach to the development of laws is similar in all forms of democratic government whether First Nation, provincial, federal or municipal.

The workshop is divided in four parts: Part 1 begins with an outline of the legal system in Canada, followed by a discussion in Part 2 of the authority of governments to make laws with particular emphasis on First Nation government law-making authorities. Part 3 discusses the need for laws, alternatives to laws, the factors to be considered in developing laws and the limits to making a law. Finally, Part 4 of the workshop is concerned with some of the technical aspects of organizing and writing laws. Participants will also develop and draft an outline of a short law during the course of the workshop based on these materials.

What is a Law?

Legislation or statutes are laws made by governments. A law is a rule or rules of conduct which are approved and enforced by governments over a certain territory. Laws are administered by the government and the courts interpret and apply these laws. In addition, courts have developed the “common law”, which consist of rules of conduct based on precedents developed over many centuries by the courts. For example, the law of contracts and negligence are rooted in the common law. Similarly the legal nature of aboriginal and treaty rights is of common law origin.

PART 1: OUTLINE OF THE CANADIAN LEGAL SYSTEM

"If we desire respect for the law, we must first make the law respectable."
– Louis D. Brandeis

Canada is governed by a constitution which is composed of many documents and laws – the Royal Proclamation of 1763 for example. Generally, the structure and authority of government in Canada is found in the *Constitution Act, 1867.* The *Act* distributes the legislative powers of Canada between the Parliament of Canada and the legislatures of the provinces (Part VI, sections 91 to 95). The legislatures of the territories exercise legislative authority through delegation from the Parliament of Canada.

Canada's system of responsible parliamentary government is based on the rule of law. This means that laws must be made in conformity with the Constitution. The Crown retains very few regulatory powers that are not subject to the legislative or law-making process. For example, regulations governing the issuance of passports or medals and honours are still made under the royal prerogative.

Law-making authority in Canada is subject to a number of constraints. Firstly, Parliament and the provincial legislatures are limited by the constitutional distribution of powers under the *Constitution Act, 1867*. Section 91 of the *Act* identifies specific areas over which the federal government has exclusive legislative power (i.e. criminal law and procedure, trade and commerce, copyrights, and national defence etc.). It also provides for federal responsibility over any other areas not exclusively given to the provinces. Section 92 of the *Act* identifies specific areas over which the provincial governments in Canada have legislative power (i.e. property and civil rights, administration of justice, education, health, and welfare, etc.).

These governments are also constrained in their law-making powers by the existing Aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, and by certain other constitutional provisions. Particularly important to Aboriginal peoples is subsection 91(24) of the *Constitution Act, 1867*, which gave the federal government jurisdiction over "Indians, and Lands reserved for the Indians". The federal government used this authority in the early years of Confederation to conclude a series of numbered treaties in western Canada. This continued the British policy, set out in the Royal Proclamation of 1763, of making treaties with the Indians occupying the land which settlers wished to develop.

Lastly, governmental law making powers can be limited by the *Canadian Charter of Rights and Freedoms* (the Charter). The constitution has been amended several times, most recently by the *Constitution Act, 1982*. Section 25 of the Charter guarantees that its rights and freedoms shall "not be construed so as to abrogate or derogate from any

Aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada".

The 1982 amendment also included section 35 which recognizes and affirms "existing Aboriginal and treaty rights". The Supreme Court of Canada has interpreted "existing" as meaning "existing in 1982".

A. A law must conform to the Charter & the Bill of Rights and must not be inconsistent with the Principles of Natural Justice

All legislation in Canada, whether federal, provincial or local, and whether statute, regulation or by-law, must conform to the *Canadian Charter of Rights and Freedoms (The Charter***)**. In addition, all federal legislation enacted after 1971 must conform to the *Canadian Bill Of Rights (*the *Bill of Rights*). Thus, First Nation Council laws must also conform to both the *Charter* and the *Bill of Rights.*

When considering laws, it is useful to be aware of the following rights created by the *Charter* and the *Bill of Rights*.

B. It is unlawful for a law to authorize discriminatory treatment of any individual, particularly on grounds of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

The *Charter* and the *Bill of Rights* limit the authority of all legislatures, including First Nation Councils, to prescribe special treatment for particular groups unless there is a strong justification for doing so.

Section 15 of the *Charter* provides that every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law without discrimination. In particular, it states that there must not be discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

A law cannot, on the grounds set out in the *Charter*, or on "analogous" grounds that relate to the "personal characteristics" of an individual, impose a burden, obligation or disadvantage on one individual or group that is not imposed on others. Nor can it withhold from a particular group or individual access to opportunities, benefits or advantages that are available to others.

With respect to infringements of section 15 of the *Charter*, a First Nations Council may enact a law that imposes a limitation of rights so long as it meets certain requirements. A Council may draw distinctions among various situations or groups of people (virtually all laws do), but not where that would amount to "discrimination". Even where discrimination occurs, a Council may sometimes be able to justify it under section 1 of the *Charter* as a reasonable limitation prescribed by law in a free and democratic society. Any such limitation should be set out in the law as clearly as possible and the

Charter right should be limited only as much as is necessary to accomplish the objectives of the law.

For example, a Council may extend broader rights to band members than to visitors or other residents who are not band members to reside, hunt or fish on a reserve. If this were contested in a court, a prosecutor would submit that the different treatment is based on aboriginal or treaty rights; or, based on constitutional and legislative policy rooted firmly in Canadian history to set aside reserves for the benefit of Indian Bands and their members. As such, the prosecutor would argue, it does not "discriminate" or, alternatively, it is reasonably justified under section 1 of the *Charter*.

On the other hand, it is inappropriate in many other instances to draft laws which distinguish between band members and those who are not members. For example, laws made for the observance of law and order or for the prevention of disorderly conduct and nuisances should treat band members and all others on reserve in a similar manner.

The Bill of Rights

The *Bill of Rights* also recognizes the right of an individual to equality before the law and to the protection of the law without discrimination. This legislation provides a more limited equality protection than does the *Charter*; it identifies only the following grounds of prohibited discrimination: race, national origin, colour, religion and sex. Moreover, it applies only to federal legislation made after 1971 - the date the *Bill of Rights* was passed.

C. A law must respect a person's freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly, and association

These fundamental freedoms are guaranteed by section 2 of the *Charter* and section 1 of the *Bill of Rights*. Courts have clarified the nature of some of these freedoms, while others still require clarification.

As with the equality rights discussed above, these fundamental freedoms are subject to the reasonable limitations of section 1 of the *Charter*.

i. Religion, Thought and Belief

The essence of the concept of freedom of religion is the right for a person:

- to entertain chosen religious beliefs;
- to declare them openly; and

- to demonstrate religious belief by worship and practice or by teaching and dissemination.

If either the purpose or effect of a law is to limit this freedom unreasonably, a court could declare the law null and void.

Laws regulating the sale of wares and merchandise or other commercial activities or prohibiting games or amusements on Sundays could give rise to infringements of the freedom of religion of those who recognize another day as their day of worship.

ii. Expression

Freedom of expression extends to all forms of expression. It includes "political expression", in other words, the right to express one's opinion on public issues. It also includes "commercial expression", such as the right of vendors to advertise their wares.

Restricting access to public institutions, such as band government meetings or administrative hearings, or restricting access to certain gatherings on a reserve, are examples of regulatory action by a First Nation Council in which freedom of expression could become an issue if it were to inhibit comment on the band political process. Laws excluding from the reserve as trespassers, persons who represent a particular point of view on a political issue, or prohibiting as disorderly conduct the making of speeches on political issues, could potentially give rise to infringements of freedom of expression.

Laws controlling how hawkers and peddlers communicate information, or prohibiting certain forms of artistic expression in public games and amusements, may also give rise to infringements of freedom of expression.

Depending on the wording and impact of the provision, courts might consider such laws to unreasonably limit the freedom to communicate thoughts and opinions.

iii. Peaceful Assembly and Association

Freedom of peaceful assembly and freedom of association are related concepts. They permit individuals to join together in a collective purpose, whether it be attendance at a political meeting, or an agreement to belong to and to participate in a political organization or a business or social relationship. Subject to reasonable limits, groups of individuals are free to join together in the pursuit of objectives and activities that any individual may lawfully pursue alone.

First Nation Councils must take these freedoms into consideration when making laws for:

- the observance of law and order;
- preventing disorderly conduct;

- controlling and prohibiting games and public amusements; and
- regulating commercial activities.

Courts could require councils to justify as reasonable any restrictions in their laws that are placed on individuals joining together. Justifications may include public health or safety, public order or some other important public interest.

D. A law must respect people's rights to life, liberty and security of the person, and their rights to the enjoyment of property, and may only deprive people of these in accordance with the Principles of Fundamental Justice

Both section 7 of the *Charter* and section 1 of the *Bill of Rights* protect the right to life, liberty and security of the person. Only the *Bill of Rights* protects the right to enjoyment of property.

i. Life, Liberty and Security of the Person

The protection in section 7 of the *Charter* goes beyond the protection of liberty and security from physical restraint. It can extend to health or even economic interests, as long as the restriction involves a threat to physical or mental integrity.

For example, an affected individual could challenge a zoning or building restriction that has the effect of preventing individuals from adequately securing their own safety or that of their children. In this regard, one court has struck down the manner in which a municipal by-law regulated the height of fences. Similarly, a court might view a by-law that authorizes the use of a dangerous chemical to control noxious weeds as infringing upon a section 7 right.

ii. Property

Although the *Charter* does not protect property interests, section 1(a) of the *Bill of Rights* does. Therefore, it is suggested that a law giving authority to use, confiscate, detain or destroy private property in order to protect the band from a contagious or infectious disease should contain a provision requiring payment of adequate compensation to an affected person for depriving that person of the enjoyment of the property that he or she was lawfully using at the time.

iii. Natural Justice

Finally, laws cannot abolish the **procedural** protections that the law extends to ensure that any decisions depriving people of life, liberty or security of the person, or of property rights, are made in accordance with fundamental justice. The main rules of natural justice to be followed are:

- to act fairly;

- to act in good faith;
- to act without bias;
- to objectively review all facts and circumstances (to use sound judgment);
- to give all parties opportunities to adequately state their cases;
- right to receive notice;
- right to know case against the party; and
- right to be represented by counsel.

Normally, a law should only give a band official the power to refuse or revoke a commercial licence or destroy or damage someone's property (for example, in order to eradicate disease or noxious weeds) if the person affected is given a reasonable opportunity to object, either orally or in writing, before the decision is carried out.

This principle, sometimes referred to as the right to "fundamental justice", "natural justice", or "due process", also requires that the circumstances of a decision must not give rise to a "reasonable apprehension of bias", such as the appearance of conflict of interest. For example, a law should not authorize a person with a financial stake in the matter, or with a family tie to one of the parties, to decide a zoning application or appeal.

Courts will apply these principles even where a law is silent as to procedure. Nevertheless, First Nation Councils should strive as much as possible to make procedural safeguards explicit in their laws for the guidance of those subject to them as well as those who apply or enforce them.

E. A First Nation Council must respect people's rights to be secure against unreasonable search or seizure

When making laws, First Nation Councils must be cautious about matters such as authorizing searches of premises or vehicles, requiring the mandatory inspection or production of documents and authorizing the seizure or removal of any form of property or documentation. This is because section 8 of the Charter gives everyone "the right to be secure against unreasonable search or seizure."

Generally speaking, an entry onto the private property of an individual in order to conduct a search or seizure requires greater procedural protection than when merely demanding that a person produce business records. A warrant issued by a justice of the peace or judge is almost always required. Only in exceptional circumstances, such as for the urgent protection of health or public safety, would an intrusion into a private home be lawful without a warrant.

A First Nation Council law can, to some extent, regulate search or seizure as an aspect of the process of gathering evidence to be used in a prosecution under the law. Evidence gathering is a procedural matter to which the summary conviction provisions of the *Criminal Code* apply exclusively. Under those provisions, an enforcement officer requires a search warrant. There are a few exceptions to this rule, but before any by-law enforcement officer seizes goods or evidence they should check with the First Nation

legal advisor to determine the legality of their actions and to minimize their personal liability for wrongful seizure or detention.

F. A law must respect people's rights not to be arbitrarily detained or imprisoned

Section 9 of the *Charter* protects individuals from arbitrary detention and imprisonment. Detentions for specific reasons, for example, to check drivers' licences, driver sobriety or the mechanical fitness of a vehicle, are not arbitrary detentions as long as persons are not detained for questioning on unrelated matters.

While courts have decided that random checks of motor vehicles infringe upon section 9 rights, courts have also said that they are justified under section 1 of the *Charter* as reasonable measures to achieve safety on highways.

Importance of these legal principles

Respect for the preceding principles becomes particularly important if a law is challenged in court. A law that does not conform to these rules may be vulnerable to such a challenge and may be struck down. This being the case, First Nation Councils will want to keep in mind all of the principles discussed in this session when drafting laws, the subject of the next session.

PART 2: FIRST NATION LAW-MAKING AUTHORITY

"Common sense often makes good law."
– William O. Douglas

As previously mentioned, Section 91 of the Constitution Act identifies specific areas over which the federal government has exclusive legislative power. Under its constitutional authority in section 91(24) of the *Constitution Act, 1867*, the federal government enacted the first *Indian Act* in 1876. It has been revised a number of times since then.

A. Indian Act

Today, the *Indian Act* is the main legislation dealing with the federal government's responsibility to, and jurisdiction over, Indians and lands reserved for Indians. It contains many provisions which are specific to Indians, including:

- a scheme for the holding of land on reserves;
- a Band membership system;
- a succession law system (wills and estates);
- an electoral system for Band Councils;
- an outline of the authority of these councils, including the right to make by-laws in certain areas;
- provisions regarding schools for Indians; and
- many other matters.

Regulations

In addition, the Governor in Council (the federal Cabinet) may make regulations concerning a number of subjects. The primary source of authority for these regulations is found in section 73 of the *Indian Act*.

Examples of regulations you may be familiar with are the *Indian Reserve Traffic Regulations*, the *Indian Band Election Regulations*, the *Indian Reserve Waste Disposal Regulations*, the *Indian Band Council Procedure Regulations* and the *Indian Estates Regulations*.

B. Framework Agreement on First Nation Land Management

The *Framework Agreement on First Nation Land Management* was signed by the Minister of Indian Affairs and Northern Development and 13 First Nations on February 12, 1996. The *Framework Agreement* sets out the principal components of this new land management process, but it is not a treaty and does not affect treaty or other constitutional rights of the First Nations. The Agreement has been ratified and

implemented by Canada in the *First Nations Land Management Act*, assented to June 17, 1999.

The *Framework Agreement* provides that First Nations who are listed in the Schedule to the federal Act have the option to manage their reserve lands outside the *Indian Act*. The option to regain control of their land can only be taken with the consent of the community. Federal administration of its reserve lands cease under the *Indian Act* when each of these First Nations takes control of its lands and resources under the Agreement by community approval of a land code.

A First Nation signatory to the *Framework Agreement* exercises its land management option by creating its own Land Code, drafting a community ratification process and entering into a further Individual Transfer Agreement with Canada. The specific steps are set out in the *Framework Agreement* and include the following:

The Land Code

A Land Code, drafted by the community, is the basic land law of the First Nation and replaces the land management provisions of the *Indian Act*. The Minister of Indian Affairs and Northern Development will no longer be involved in the management of the First Nation's reserve lands. The Land Code does not have to be approved by the Minister.

The Land Code is drafted by each First Nation and provides for following matters:

- identifies the reserve lands to be managed by the First Nation (called "First Nation land");
- sets out the general rules and procedures for the use and occupation of these lands by First Nation members and others;
- provides financial accountability for revenues from the lands (except oil and gas revenues, which continue under federal law);
- provides the procedures for making and publishing First Nation land laws,
- provides conflict of interest rules;
- provides a community process to develop rules and procedures applicable to land on the breakdown of a marriage;
- identifies a dispute resolution process;
- sets out procedures by which the First Nation can grant interests in land or acquire lands for community purposes;
- allows the delegation of land management responsibilities; and
- sets out the procedure for amending the Land Code.

<u>The Land Code is the main document that must be referred to before developing and drafting a First Nation land law, as it provides for the authority and procedure to make the law.</u>

Individual Transfer Agreement

An Individual Transfer Agreement between each community and the Minister will be negotiated to deal with such matters as:

- the reserve lands to be managed by the First Nation;
- the specifics of the transfer of the administration of land from Canada to the First Nation; and
- the operational funding to be provided by Canada to the First Nation for land management.

Community Ratification Process

In order for the First Nation to assume control over its lands, the Land Code and the Individual Transfer Agreement must be ratified by the adult members of the First Nation. All members of the First Nation who are at least 18 years of age, whether living off-reserve or on-reserve, have the right to vote on the Land Code and the Individual Transfer Agreement. The procedure for the community ratification process is developed by the community in accordance with the *Framework Agreement*.

A Brief Note on How Provincial Laws May Apply to Reserve Lands

Recall, as well that Section 92 of the *Constitution Act, 1867* identifies specific areas over which the provincial governments in Canada have legislative power. The extent to which provincial laws apply on reserves is also the subject of much legal and judicial debate. The following attempts to summarize the present state of the law, but is not intended to be a complete or conclusive statement.

General Rule

Generally speaking, a provincial law will apply on reserve if the province had the constitutional authority to pass it and if the law is otherwise valid and applicable throughout the province. Examples of provincial constitutional authority are child welfare, labour relations, insurance, contracts, corporations, most aspects of family law and the regulation of professions and trades.

At one time, some judges thought that provincial laws did not apply on reserves. In 1974, the Supreme Court of Canada, in the *Cardinal v. A.G. Alberta* case, changed this view. It declared that, while a province may not legislate on a subject matter given **exclusively** to the federal government, provincial legislation enacted under a heading of section 92 of the *Constitution Act, 1867* does not become invalid just because it affects something which is subject to federal legislation.

In 1986, the Supreme Court of Canada, in the case *Dick v. R.*, stated that provincial laws of general application apply to Indians if they do not affect or touch on their "Indianness". Traffic and family laws are examples of provincial laws which do not touch on "Indianness" in their application.

Extension of the General Rule – Section 88

Even where a provincial law may single out Indians, affect their status or capacity as Indians, or directly affect matters that are "inherently Indian" or "closely related to the Indian way of life", that law may apply on reserve. *Dick v. R.* held that such provincial laws may apply because of section 88 of the *Indian Act*.

Section 88 provides that these provincial laws apply except to the extent that they are inconsistent with the *Indian Act* or any order, rule, regulation or Band by-law made under the authority of the Act and subject to the terms of any treaty and any other Act of Parliament.

Exceptions to the General Rule and its Extensions

(a) Indian Lands:

While *Dick v. R.* held that provincial laws may apply to **Indians on reserves**, it confirmed that they cannot apply to **"*lands* reserved for Indians"**. Thus, courts will not recognize a provincial law which directly affects Aboriginal title, or the use, disposition or manner of holding Indian lands.

Examples of provincial laws of general application that do not touch on Indianness, but that affect reserve lands are landlord and tenant laws, laws regarding the registration of lands and provisions of family laws relating to the possession or sale of the matrimonial home. These laws <u>do not</u> apply on reserve.

(b) S. 35(1) of the *Constitution Act, 1982*:

A provincial (or federal) law may, through the operation of section 35(1) of the *Constitution Act, 1982*, be of no force and effect to the extent that it interferes, without justification, with an existing Aboriginal or treaty right.

The scope of this constitutional protection is still being defined by the courts.

Overlap of Provincial and Federal Jurisdiction

Because many provincial laws apply on reserve, there will be situations where both federal and provincial laws might apply to the same set of circumstances. These laws are said to "co-exist". A good example of this type of overlap is in the regulation of highway traffic.

PART 3: DECIDING IF A LAW IS REQUIRED

"In law, nothing is certain but the expense."
– Samuel Butler

Making a new law is just one of several ways of achieving governmental policy objectives. Alternatives include agreements and guidelines, policies and directives or, more generally, programs for providing services, benefits, or information. In addition, a law may include many different kinds of provisions, ranging from simple prohibitions through a wide variety of regulatory requirements such as licensing or compliance monitoring. Law should be used only when it is the most appropriate. It is up to the First Nation to show that this principle has been met, and there are no other ways to achieve the policy objectives effectively.

The decision to address a matter through a bill or regulation is made by the First Nation Council on the basis of information usually developed by First Nation officials. The information must be accurate, timely and complete. As a beginning point to determine if a law is required or if another option is available and appropriate, it is important to:

- analyze the matter and its alternative solutions;
- analyze the land code to determine the authorities and processes which permit the First nation to make the law;
- engage in consultation with those who have an interest in the matter, including other First Nation departments, programs or services that may be affected by the proposed solution;
- analyze the impact of the proposed solution; and
- analyze the resources, both human and financial, that the proposed solution would require, including those needed to implement or enforce it.

Related Matters should be in One Bill

When a legislative initiative is being considered, and where it is appropriate and consistent with legislative drafting principles, related matters should be combined in one bill, rather than being divided among several bills on similar subjects. A single bill allows legislators to make the most effective and efficient use of their time for discussion and study by the Council, a First Nation Land Committee and community members and other stakeholders.

Review and Expiration Clauses

Finally, caution should be taken when considering whether to include a "sunset" or expiration provision in a law, or a provision for mandatory review of the Law within a particular time or by a particular committee such as the Lands Committee or Board.

Alternatives to these provisions should be fully explored before proposing to include them in a bill.

Choose the Right Tools to Meet the Policy Objectives

Law should be used only when it is most appropriate. When a legislative proposal is made, it is up to the sponsor – be it Council, a Land Committee or Board, a member or stakeholder, to show that this principle has been met, and there are no other ways to achieve the policy objectives effectively.

This discussion provides guidance on meeting this requirement by providing an analytical framework that covers:

- the range of instruments (techniques) available for accomplishing policy objectives;
- how to determine which ones are the most appropriate; and
- how to decide whether a First Nation land law is required.

First Nations are encouraged to adopt a comprehensive approach to developing proposals to accomplish policy objectives. They should focus on achieving a desired outcome, rather than assuming that a particular instrument, particularly a Law or regulation, will be effective. In this discussion some of the factors to consider in law development are reviewed.

Overview

- Instrument-choice should be considered early in the policy development process.
- First Nation governments cannot deal with every situation. Its involvement must be assessed in light of its responsibilities, its resources and the likely effectiveness of its involvement relative to the involvement of other governments or the private sector.
- The range of possible instruments available to accomplish policy objectives is very broad, allowing the First Nation to choose the type and degree of its intervention, if any.
- A law should only be chosen after assessing the full range of possible instruments.
- Instrument-choice has wide-ranging effects and is an important element of many governmental activities.
- Consultation on instrument-choice, both within and outside the First Nation, is essential to making good choices.

Assessment

If a situation may require the First Nation's attention, it should be assessed to determine what, if anything, should be done to address it. This involves determining the

objectives in addressing it and how these objectives can best be accomplished. This determination should be done as early as possible in the policy development process.

The following questions may help you do this:

- What is the situation?
- What are the objectives in addressing the situation and what particular results are desired?
- Is there a role for the First Nation or Council?
- What instruments are available to accomplish the desired results?
- What is involved in putting the instruments in place?
- What effect would the instruments have?
- How will their success be measured?
- Which (if any) instrument(s) should be chosen?

The assessment process does not necessarily follow the order of these questions. Answers reached at one point in the process may have to be re-evaluated in light of answers to other questions.

In order to obtain sound answers, it is also important to conduct appropriate consultations with those affected.

A. Examine the Situation

This step involves defining the key features of a situation that may require the First Nation Council's attention. A situation may present itself in the form of a problem, in which case you should try to get to its source and not define it in terms of its symptoms.

The situation may also be an opportunity for the First Nation Council to do something creative or positive, for example celebrating a First Nation event – Aboriginal Day or a treaty, as opposed to responding to a problem.

A description of the situation is often framed in terms of how people are behaving or how they may behave in future. Their behaviour may be active (doing something) or passive (not doing something). A behavioural approach involves identifying the following elements:

- the behaviour that is, or may be, creating or contributing to the situation;
- who is engaging in the behaviour;
- who is affected by the behaviour and what these effects are;
- whether some behaviour, or behaviour by some persons, is more serious than others;
- what external factors are influencing the behaviour;
- what behavioural changes are desired to address the situation.

B. What Are the Objectives and Desired Results?

This question is intended to help define the objectives as concretely as possible in terms of particular results to be achieved. Objectives and the desired results go hand in hand, but they are not quite the same.

For example, an objective might be to make a particular activity safer – build fences around swimming pools to protect children from drowning in backyard swimming pools, while the desired result might be a 30 percent reduction in the rate of drowning.

Another example is an objective of reducing graffiti on public buildings in the First Nation by the prohibition of the defacing of First Nation public buildings, here again the desired result might be 25 percent reduction in graffiti.

C. The Role of the First Nation

Consider whether the First Nation can or should do something. The *Constitution*, the *Framework Agreement* and the First Nation Land Code limit the authority of the Council through:

- the legislative powers of the First Nation
- limits on the exercise of legislative powers, for example the Canadian Charter of Rights and Freedoms;
- obligations relating to such things as the provision of services to all residents, not only members; or to all members whether resident on or off First Nation lands.

Practical considerations should be addressed as well. Governments have limited resources and they can't deal with every situation: perhaps others are better placed to achieve a desired outcome.

Finally, if the First Nation does become involved, what role should it play? Possible roles include taking the lead, acting in partnership with others or stimulating or facilitating action.

D. Instruments Available to Accomplish the Desired Result

This question looks at the full range of available policy instruments, which can be grouped into five categories:

- information;
- capacity building;
- economic instruments, including taxes, fees and public expenditure;
- rules; and
- organizational structure.

i. Information

Information can be a powerful tool. People act on the basis of the information available to them. By giving them specific information, it may be possible to influence their behaviour. Some examples are:

- consumer information about the quality or safety of products;
- occupational health and safety information;
- anti-drinking and driving advertising and education campaigns;
- "buy-Canadian" promotional campaigns;
- environmental awareness programs (e.g. littering; hazardous substances);
- information about how programs are operated or about administrative practices;
- symbolic gestures (e.g. an apology).

ii. Capacity Building

Capacity-building increases the ability of people or organizations to do things that advance policy objectives. It goes beyond providing information to include transferring to them the means for developing their ability. Some examples are:

- employment skills training programs;
- programs to support scientific research and public education about the results of the research;
- information gathering through consultation or monitoring; and
- working with industry or business to help them develop voluntary codes governing their practices.

iii. Economic Instruments

Many instruments have a mainly economic focus. They affect how people behave in the marketplace or in other economic transactions. These instruments include taxes, fees and First Nation expenditure, which are considered separately below. They also include the creation of exclusive or limited rights, such as marketable permits, licences or marketing quotas that acquire value because they can be bought and sold. Insurance requirements are another example of economic instruments because they can, for example, force businesses to assess and reduce risks and ensure that their products are priced to cover the costs of insurance or preventive measures.

a) Taxes and Fees

The basic purpose of taxes and fees is to raise revenue. However, they are also capable of influencing how people make choices about the activities to which the taxes or fees apply. In this sense, they can be powerful tools for accomplishing policy objectives. Examples include:

- taxes on income, property or sales;
- fees or charges for licences or services; and
- tax exemptions, reductions, credits or remissions.

b) First Nation Expenditure

The First Nation can act by transferring or spending money in a particular area in order to accomplish policy objectives involving those who receive the money. This makes it a potentially effective instrument for encouraging particular activities that support the policy objectives. Some examples of public expenditure are:

- monetary benefits, grants or subsidies;
- loans or loan guarantees;
- vouchers redeemable for goods or services;
- transfers to other governments or agencies for education or health programs.

iv. Rules

Rules, in the broadest sense, guide behaviour by telling people how things are to be done. However, there are many different types of rules. For example, they differ in terms of how they influence behaviour:

- laws, regulations or directives tend to apply to groups of people and have legal force in that they can be enforced by the courts;
- contracts or agreements also have legal force, but they generally apply only to those who are parties to them; and
- guidelines, voluntary codes or standards and self-imposed rules usually apply to groups of people, but they do not have legal force, relying instead on their persuasive or moral value.

Rules having legal force are generally cast in terms of requirements, prohibitions or rights. A combination of these elements can be seen in rules that create:

- rights that entitle people to do things on an equal footing, such as obtaining goods, services or employment, and corresponding requirements to provide these things to those entitled to them; and
- prohibitions against doing something without a licence that confers a right to do it, for example, exclusive or limited rights, such as marketable permits, licences or marketing quotas that acquire value because they can be bought and sold.

Rules may also be formulated in different levels of detail, for example:

- as precise requirements that tell people exactly what to do; or
- as performance standards that set objectives that people are responsible for meeting.

Incorporation by Reference

Finally, it is worth noting the drafting technique of incorporation by reference. Rules of one type (for example, Laws or regulations) can sometimes be drafted so that they incorporate rules of the same or another type (for example, other Laws or regulations as well as industry codes or standards) simply by referring to them, rather than restating them. This avoids duplication of the incorporated rules and can be a way of harmonizing the laws of several jurisdictions if they each incorporate the same set of rules.

v. Organizational Structure

Organizational structure is often critical in accomplishing policy objectives. It generally supports the use of other instruments by providing for their administration. Examples of organizational instruments include:

- First Nation structures to deliver programs;
- framework agreements and partnerships with other governments or organizations;
- privatization or commercialization of First Nation government services (e.g. garbage collection); and
- First Nation investment in private enterprises.

vi. Combination and Timing of Instruments

These instruments are not necessarily stand-alone alternatives to one another. In fact, many of them are mutually supportive or otherwise interrelated. For example, information enables organizations to work effectively and organizations are often needed to administer legal rules, such as Laws or regulations, which may, in turn, be needed to support the creation of organizations.

Another important dimension of the range of available instruments is timing. Some instruments are better used in the initial stages of policy implementation while others may only be needed later if circumstances warrant. For example, information campaigns often precede the imposition of legal rules and, if they are effective enough, they may avoid the need for such rules.

E. Putting the Instruments in Place

This question involves the legal, procedural and organizational implications of using each instrument as well as the process requirements for making them operational. It also involves considering in greater detail the role that the First Nation council may play, whether acting alone or as a partner with other levels of government or the private sector.

You should assess:

- whether the use of the instrument is within the general mandate or authority of the First Nation;
- whether some specific legal authority is needed, for example, authority to impose taxes or penal sanctions, and, if so,
    - whether it requires new Laws to be made,
    - whether there is legal authority for the First Nation to make the new laws

It is particularly important to consult legal advisers when considering this legal aspect of the question.

- what the short- and long-term operational requirements, both organizational and financial, of the instruments are, including:
    - organizations and personnel needed to administer the instruments, for example, officials needed to assess benefit claims or conduct inspections,
    - additional resources for court costs;

- who should be consulted before the instruments are put in place (other First Nation departments, other governments, stakeholders);
- what processes are required to put the instruments in place, including processes required for any new laws (e.g. do guides and forms for the process to register documents in the First Nation Law Register need to be developed?);
- what, if any, monitoring or enforcement measures will be needed, such as penalties, inspections and court action (this is closely connected to the next question of what effect the instruments would have).

F. What Effect Would the Law Have?

This question involves assessing how the Law (or other instrument) would work, including:

- whether the Law will bring about the desired results, including whether people will voluntarily do what the instruments encourage or require, or whether some are likely to try to avoid compliance or find loopholes;
- whether the Law will cause any unintended results or impose costs or additional constraints on those affected by them;
- what the scope and nature of any likely environmental effects will be, particularly any adverse environmental effects and how they can be reduced or eliminated;
- what effect the instruments may have on inter-governmental relations, particularly in light of the First Nations' obligations under provincial or federal agreements;
- how the general public will react to the Law and, in particular, whether it will be perceived as being enough (or too much) to deal with the situation.

When deciding whether to choose Laws, you should also keep in mind their strengths and weaknesses. They can often be used to overcome resistance in achieving the desired results because they are binding and enforceable in the courts. However, they may also give rise to confrontational, rights-based attitudes or stifle innovative approaches to accomplishing the policy objectives. It should not be assumed that a legal prohibition or requirement will, by itself, stop people from doing something or make them do it.

G. Measuring the Effectiveness of the Law or Other Instrument?

It is not enough to choose various instruments and use them. Clear and measurable objectives must also be established as well as a means for monitoring and assessing whether they are being achieved. This assessment should be ongoing and include looking at how other governments are addressing the same situation. This is necessary both for determining whether the chosen instruments should continue to be used as well as for providing a better basis on which to make instrument-choice decisions in future.

H. Is a Law the Only Choice?

The final step is to choose the instruments that would be most effective in achieving the policy objective. It is important to realize that a single Law is seldom enough. Usually a combination of instruments is required, often in stages with different combinations at each stage. They should be chosen through a comparative analysis of their costs and benefits, taking into account the answers to the preceding questions.

This is also a good time to consider again whether there is a role for the First Nation Council. It may be that none of the instruments should be chosen if:

- the situation does not justify the First Nation's attention, for example, because there is no problem or the situation is beyond the First Nation's jurisdiction or is not a priority for it;
- the situation will take care of itself or will be addressed by others;
- the First Nation does not have the resources to address the situation;
- the First Nation becoming involved in the situation would lead to unmanageable demands to become involved in similar situations.

Sources of First Nation Legislative Proposals

There are basically five sources of legislative policy:

- the members;
- the Chief and Council;
- First Nation administration or Land Committee;
- courts and administrative agencies; and

- federal legislation (e.g. membership and election codes; matrimonial real property).

I. Guidelines / Checklists for Policy Development of Law (or other Instrument)

These Guidelines or checklists are a set of analytical criteria for use in the assessment and development of policy to propose a law. While the focus of this discussion is on making a law, a similar analysis or approach can be used to develop other instrument such as guidelines, policies, programs etc. These guidelines were originally developed as part of a broader exercise designed to improve policy-making in the federal government and to improve the quality of policy discussions in Departments and Cabinet Committees. The Guidelines have been modified for use by First Nations.

POLICY BASICS TEST

- ✓ Has the problem been adequately identified and are the goals and objectives clearly defined?
- ✓ Are there horizontal considerations and interdependencies with other priorities or issues (e.g. environment, etc.)?
- ✓ Are they in member-focused terms?
- ✓ Does this initiative build on and fill gaps in existing policy and programs (federal, provincial)?
- ✓ Does the proposal replace or overlap any existing program?
- ✓ Will this initiative be sustainable (social, economic, environmental) in the longer term?
- ✓ Have a range of options for the achievement of goals/objectives been considered? The full range and choice of instruments (e.g. legislative, regulatory, expenditures)?
- ✓ Has a feedback mechanism been incorporated into policy and program design to allow for evaluation, fine-tuning, and updating?
- ✓ Is the policy based on sound science advice?

PUBLIC OR COMMUNITY INTEREST TEST

- ✓ How would the proposal meet the needs of community members and other stakeholders?
- ✓ How do the overall societal benefits compare to its costs? Have the full range of risks been assessed?
- ✓ Does the proposal respect the rights of community members and other stakeholders and take into account their diverse needs (e.g. non-member, off reserve members, etc.)?
- ✓ Have community members and other stakeholders been given an opportunity for meaningful input?

FIRST NATION INVOLVEMENT TEST

- ✓ What is the rationale for First Nation involvement in this area (e.g. constitutional, legal, scope of issue)?
- ✓ Have the particular First Nation interests been adequately identified?

QUESTION OF ACCOUNTABILITY TEST

- ✓ Has an adequate accountability framework been developed? (in particular for multi-stakeholder arrangements)
- ✓ Have mechanisms been established for ongoing monitoring, measuring, and reporting to members on outcomes and performance?
- ✓ Have eligibility criteria and First Nation administration commitments been made publicly available?

URGING PARTNERSHIPS

- ✓ Can this initiative benefit from joint planning and collaboration?
- ✓ Has it been designed in a way that complements existing programming and services provided by the First Nation or another level of government?
- ✓ Are the relative roles and contributions of partners clear? How will they be publicly recognized?
- ✓ Have opportunities for partnerships with communities, voluntary sector and private sector been considered?
- ✓ Have mechanisms been established to consult with other governments?

EFFICIENCY AND AFFORDABILITY TEST

- ✓ Will the proposed option be cost-effective?
- ✓ Does the proposal assess non-spending options?
- ✓ Does it consider reallocation options?
- ✓ Would a partnership based effort result in a more efficient or effective program or service?
- ✓ What are the longer term funding issues associated with this proposal - for the First Nation, and for its partners?
- ✓ Are there program integrity issues related to this initiative (e.g. non-discretionary/legal commitments, risks, strategic investments)?
- ✓ Has the initiative considered downstream litigation risks?

PART 4: DRAFTING LAW

"The best way to get a bad law repealed is to enforce it strictly."
– Abraham Lincoln

When drafting laws, First Nation Councils should be aware that laws enacted under the authority of the Framework Agreement on First Nation Land Management and the Land Code ratified by the First Nation will apply only upon the territory over which the Council has jurisdiction, that being the actual reserve or First Nation land territory.

First Nation Councils must also bear in mind the fact that laws are a type of legislation, and, as such can come under the scrutiny of the courts. Accordingly, it is highly recommended that Councils retain the services of a lawyer to be of substantial assistance in the law development process.

When drafting a law it is critical to be logical and organized. A good suggestion for a guideline is to write the law in as simple and straight-forward a manner as the subject area allows.

For organizational purposes the law should be arranged in such a manner that the subject area of the law is divided into major groupings (i.e. administrative setup, administrative procedures, offences and penalties, appeal procedures...), or into whatever groupings are required to be addressed in the law. Then, within each general grouping there is a breakdown of related information pertaining to that specific grouping. Each piece of information that is included should be described separately. What results is a system of parts, sections, subsections and other subdivisions similar to the organization of federal and provincial laws. This will ensure readability and facilitate interpretation. Any law that is vague or ambiguous could be held invalid by a court.

Whether the First Nation Council drafts the law itself or takes the matter to a lawyer, certain basic drafting requirements must be met. There is a structure to every law and each part is important for different reasons.

A law consists of the following parts:

- title and numbering;
- recital;
- enacting clause;
- definition section (optional but strongly suggested);
- main body of the law;
- land code law procedural requirements; and
- schedules and appendices (optional).

A. Title and Numbering

A law should have a title which sufficiently describes its purpose. If the title is lengthy, the law may designate a "short title" for common usage. Using a short title is optional but quite common, and is used for easier reference purposes - for written or oral description.

It is critical to accurately identify laws. Any logical, clear, consistent system to identify laws may be used, however, it is suggested that a consecutive numerical system be used when numbering laws. For example, the year of enactment can form part of the number, i.e. " XX First Nation Law No. 1996.15" would mean the fifteenth law enacted in 1996. For each new year, the numbers would start again at number 1. The identification system is to ensure that when the law is being cited or used by the courts, First Nation Council, or any affected person there will be no reference to, or confusion with anything other than that particular law.

B. Recitals

A recital is not necessary, but may be important because a recital allows the Council to describe the reasons why the law is required. The recital gives the context in which the law can be interpreted. Courts, when interpreting laws may use the recital section to understand the context of the law and this may assist the courts in determining the reasonableness of the provisions.

The recitals to the law are a brief statement of its purpose and reasons why the law is required, and a listing of the authorities in the Land Code upon which the law is based. [Re Caldwell and Galt (1899) 30 O.R. 378]

C. Enacting Clause

An enacting clause is a formality that states that the First Nation Council has enacted the law, and that the law is in fact a law and not simply a Band Council resolution.

D. Definition Section

There is a particular purpose to every law. As laws are a method of addressing your community's needs it is extremely important for the law to be clearly written and understandable, yet precise enough that the law does what you intend it to do, when interpreted by a court.

One of the methods that may be used to ensure that a law is interpreted in a fashion you want it to be interpreted is to use a definition section wherein you define the key words in the law. If this is done then the courts, if they review your law, will use the definition you have assigned to the word and not some other definition which may or may not reflect what you want the law to do.

There are different sources of definitions for key words or concepts;

1. Definitions should be used to define words in a law which might require interpretation in the context of the law. Many words and phrases are defined in the Interpretation Act, R.S.C. 1985, c. I-2, and this Act should be referred to when developing a law.
2. Words used in a law, if defined in the First Nation Land Management Act (FNLMA), have the meaning given to them in the FNLMA unless a contrary intention appears in the law (see: sections 3 and 16, Interpretation Act, R.S.C. 1985, c. I-21). Although it may be possible in some circumstances to define a word in a law more broadly than it is defined in the FNLMA, in most cases to do so could affect the legality of the law. It is especially important not to expand in a law the meaning of any word used in the FNLMA, if that word is defined in there. Although it is usually permissible to define a word in a law more narrowly than it is defined in the FNLMA, the legality of this may also be questioned in some instances.
3. If the words or phrases are not defined in the law, or in other legislation, the courts will look to the generally accepted or established meanings of the words or phrases (i.e. dictionary meaning).

Accordingly, as a matter of practice it is advisable not to define words and phrases differently than they are defined in the FNLMA, unless it is absolutely necessary. If such a situation occurs it is suggested that the First Nation Council seek legal advice on the question.

Once the word, or phrase, is defined then the same word or phrase should be used in the body of the law to ensure the proper interpretation. For example, if one term is defined in the definition section but another term is used in the body the courts may assign a definition to the used word that is different from the word defined in the law.

When you are defining words and phrases, there are some general rules of construction which may be of assistance;

The definition of a word may be introduced by the verb "means" if it is intended to restrict the meaning of the word to the definition that is given. If, however, the intention is to expand the normal meaning of the word to other meanings that the word might not ordinarily bear, or to give examples of the intended meaning, it should be introduced by the verb "includes". For example, "boat" means a motor boat, or "boat" includes a motor boat - the first example using "means" indicates that only a motor boat is considered when the term "boat" is used, whereas in the second example any type of boat (i.e. sail boat, row boat, canoe, sailboard and any other device used to transport persons by water) also includes motor boats.

Words to be defined should be listed in alphabetical order and may be numbered or lettered. If the law is enacted in two or more languages then the words or phrases

should not be numbered or lettered because the alphabetical order would be different between the different languages.

E. Main Body of Law

The main body of a law will include substantive rules of procedure or conduct as well as measures for administering and enforcing the law.

Any format that is clear and understandable is satisfactory, but it is generally accepted that administrative provisions precede the operative or substantive rules.

It is also generally understood that the section or part pertaining to offenses and penalties come towards the end of the law. Offenses and penalties should include the following;

- the law should include a general provision that a person who violates any provision of the law, or a specified provision of the law, commits an offence. A specific offence may be cited wherein a specific penalty for that section may be used, however any penalty must comply with those set out below; and
- the penalties for violation of a First Nation law cannot differ in nature from those set out in Section 22 of the FNLMA. The law may also limit the fines to less than $5,000.00.

F. Law Making Procedures

It is very important to adhere to the procedural requirements of laws pursuant to the Land Code because laws can be successfully challenged in broad general ways in one, or a combination of the following ways, which could result in the law being ruled invalid;

- factually; examples such as "I was not the person who committed the offence" or "the facts as alleged by the law enforcement officer are not correct, and the real facts do not disclose an offence", (losing a case on factual grounds does not mean the law is invalid)
- on substantive or jurisdictional grounds; examples such as "the subject area in the law is beyond the jurisdiction of the First Nation Council to enact under Clause 18 of the Framework Agreement on First Nation Land Management", or "the law infringes the Charter of Rights and Freedoms", and/or,
- procedural deficiencies; examples such as "not holding a special meeting of the band for purposes of considering the law under the Land Code, but enacting the law anyway".

It is essential to comply with the provisions of the Land Code regarding enactment.

A statement to the effect that a law was made by a Council or community at a duly convened meeting on a particular date must be included. As well, the signatures of the

members of the First Nation Council who voted in favour of the law should appear at the end of the law with a statement informing the reader what constitutes a quorum of the band and the number of members of the Council present at the meeting.

G. Schedules and Appendices

There may be attached to the law schedules and appendices that are referred to in the law. These attachments to the law would be used for required forms necessary for application of the law (i.e. application forms to be used when applying to the band, i.e. residency, licenses), or schedules outlining the categories pertaining to the law (i.e. different zones described, or qualifying lists established in zoning laws; traffic zone designations, traffic offence fines, signing...). Reference to the schedules or appendices must be included within the body of the law as being part of the law.

Power to Make Certain Laws

Laws are enacted pursuant to the First Nation's Land Code. The Land Code outlines the power of First Nations to make land laws. The Framework Agreement, section 18.1 provides that:

> The council of a First Nation with a land code in effect will have the power to make laws, in accordance with its land code respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

To be valid, the subject-matter of the enacted laws must fall within the scope of the areas indicated in the Land Code. If the enacted laws do not fall within the scope of the authority given by the section of the Code then a reviewing court will overturn the laws, or delete from the law the improper portions, as they would be in excess of jurisdiction given to the Bands under the Framework Agreement.

Enforcement of First Nation Laws

First Nation Councils enact laws to encourage or require members/residents/visitors of the community to conduct themselves in particular ways or to avoid certain types of prohibited conduct.

Often the mere existence of a law with a small penalty is enough of a deterrent to stop or prevent undesirable behavior or practices. An example of this is a garbage law where a warning to someone to clean up garbage usually achieves the desired result.

Many people obey laws because they represent the community's collective view of how one should conduct oneself. Others obey laws to avoid the penalties which follow

failures to comply. Nevertheless, some laws may require significant penalties and strict enforcement to bring about the desired conditions in a community.

As First Nations laws are primarily a band's concern, in order to be effective there has to be a penalty and a method of enforcement. It is the obligation of band councils to enforce their own laws. The Department of Indian Affairs does not take responsibility for doing so.

The discussion in this session mainly concerns the enforcement options available to First Nations and the procedures involved in enforcing laws.

Identifying Offenses and Setting Penalties in the Law

Defining what conduct constitutes offenses under the law and setting the maximum amount of penalties for them is a matter of policy for the Council to determine. Above, we discussed the legal principles affecting penalties and the factors a Council might consider in setting maximum penalties, we also discussed the drafting requirements related to penalties and enforcement.

The key points to keep in mind in this session are:

- the by-law must set maximum penalties within the maximums set in the Framework Agreement;
- the law cannot establish minimum penalties; and
- the judge determines the actual sentence, based on input from the prosecutor (who may also include band council or community views or wishes) and from the offender

The Main Methods of Enforcing Laws

There are two main methods of enforcing laws:

- verbal and written warnings or discussions are often sufficient to convince people to modify their behavior to conform to the law requirements; and
- formal charges bringing offenders before the provincial courts may be required in other situations

Some communities have also developed Alternative Justice Mechanisms. These are discussed at the end of this session.

Two Kinds of First Nation Laws

There are generally two kinds of laws:

- those that are **administrative** in nature, such as building code or a zoning law; and

- those that are **quasi-criminal** in nature (dealing with law and order), such as traffic and environmental infractions.

SUMMARY - CHECKLIST FOR PREPARING BILL-DRAFTING INSTRUCTIONS

Getting Started

- Main objectives of the proposal
- Time needed to prepare drafting instructions
- Public commitments

General Legal and Policy Matters

- Legal context
- Policy context
- Resources
- Legal instruments for accomplishing policy objectives

Legal Structure of the Proposal

- Combining matters in a single bill
- Types of legal instruments
- Provisions that should be in the Law
- Provisions that should be in regulations
- Incorporation by reference
- Administrative instruments
- Recipients of powers

Drafting and Organization of a Law

- Titles
- Preambles and purpose clauses
- General application provisions
- Application to the Crown
- Financial provisions
- Information provisions
- Monitoring compliance
- Sanctions for noncompliance
- Enforcement powers
- Appeals and review mechanisms
- Dispute resolution mechanisms
- Extraordinary provisions

Technical legislative matters

- Sunset and review provisions
- Repeals
- Consequential and conditional amendments
- Transitional provisions
- Coming into force

GETTING STARTED

MAIN OBJECTIVES OF THE PROPOSAL

- ✓ What are the main objectives of the proposal?

It is essential to clearly articulate the precise purpose of proposed legislation, so that decision makers and the drafters properly understand what the legislation is supposed to achieve.

For amending bills that are intended to accomplish a number of different purposes, the instructions should explain these purposes separately in relation to the provisions that are to be amended. They should also include a general instruction to make consequential amendments to other provisions.

TIME NEEDED TO PREPARE DRAFTING INSTRUCTIONS

- ✓ Is there enough time to prepare the drafting instructions?

Thinking through the detail of drafting instructions will raise policy issues that were not identified when ideas were expressed in general terms in the policy development stage. Time will be needed to address and resolve these issues. The First Nation must be prepared to spend the time necessary to produce a coherent set of provisions to implement the proposal. Unresolved issues haunt a legislative project until they are resolved and it is wiser and more efficient in the long run to resolve as much as possible before the actual drafting begins.

The time spent in thinking through drafting instructions is well worth it. Good drafting instructions will avoid:

- delays in drafting the bill because of unresolved policy questions;
- having to go back to Council or the community to clarify policy issues that were not adequately resolved in the original proposal;
- having to propose amendments once the draft law has been prepared because the policy was still in flux after the draft law was introduced;
- being left without the necessary legal authority after the Law is passed to draft the regulations required to complete the legislative scheme.

Before establishing the time frames for the proposed law make sure that the legislative drafter has been consulted. The time needed to prepare the draft may be much greater than the expected.

PUBLIC COMMITMENTS

- ✓ Has the Chief and Council made any public commitments, either generally or about the specific legislative proposal, that will affect its contents or timing? These public commitments could affect the timing of the Law or require it to be framed in a certain way

Stakeholders or other governments are sometimes consulted on the draft proposals. When the aim of consultations is a negotiated agreement on wording that is to be proposed in the legislation, drafters should be consulted before specific wording is agreed on

GENERAL LEGAL AND POLICY MATTERS

LEGAL CONTEXT

- ✓ What legal considerations affect the proposal?

This portion of the drafting instructions should be completed by the legal adviser. It involves an assessment of the law related to the proposal in order to ensure that the resulting legislation will operate effectively.

Some areas of particular concern are:

- Does the First Nation have constitutional authority to make the Law?
- Will it affect matters within provincial or federal jurisdiction?
- Is it consistent with the Canadian Charter of Rights and Freedoms, the Canadian Bill of Rights?
- Does the proposal distinguish between members and non-members; on-reserve members and off-reserve members?
- Does the proposal raise any gender or other equality issues?
- Is it consistent with the Framework Agreement, the land code and other First Nation Laws?
- Any conflicting legislation should be specifically identified and the conflict should not be resolved by a general "notwithstanding" provision.
- Does the proposal respond effectively to any court decisions or legal opinions that gave rise to the legislation or any of its elements?
- Are there any agreements which the First Nation has signed that relate to the proposal?
- Does the proposal rely on provincial private law (for example, contracts or property) to supplement it? (e.g. Quebec civil law or common law.

POLICY CONTEXT

- ✓ Do any First Nation policies affect the proposal?

RESOURCES

- ✓ Who will incur costs as a result of the new Law?

If the First Nation will incur costs as a result of the legislation, a strategy must be identified for managing their reaction or obtaining their support.

- ✓ Will the proposed law require additional First Nation staff and / or staff training; new facilities or equipment?

If there are new First Nation costs associated with implementing or complying with the proposed legislation, a source of funding will be needed before approval.

LEGAL INSTRUMENTS FOR ACCOMPLISHING POLICY OBJECTIVES

- ✓ How will the policy objectives of the proposal be accomplished?

There are many legal mechanisms available for implementing policy objectives. These include:

- the creation of public bodies and offices;
- the conferral of powers and duties on public officials;
- rules that regulate, prohibit, require or authorize particular activities;
- the creation of sanctions for non-compliance with the rules.

Some particular mechanisms that are often adopted include:

- licensing schemes directed toward controlling particular activities;
- monitoring and enforcement provisions.

As far as possible, the drafting instructions should provide a picture of how the legislation will actually work, describing the type of machinery envisaged and the necessary powers and duties, including how the legislation will be enforced.

LEGAL STRUCTURE OF THE PROPOSAL

COMBINING MATTERS IN A SINGLE BILL

- ✓ What should be included in a single bill?

Related matters should be combined in one bill, rather than being divided among several bills on similar subjects. A single bill allows the Council to make the most effective and efficient use of their time for debate and study. However, matters should only be combined if it is appropriate and consistent with legislative drafting principles. Titles to Laws are among the most important tools people use to find the law. If very different matters are combined in one Law, it becomes more difficult for people to find the law relating to the matters that concern them.

TYPES OF LEGAL INSTRUMENTS

- ✓ What types of legal instruments should be used?

There are many legal instruments and other related documents available to implement policy. They fall into three categories:

- Laws
- Regulations
- Administrative documents (for example, contracts, internal directives, bulletins, decision documents).

Both Laws and regulations are forms of law, with the same legal effect. Administrative documents do not necessarily have legal effect.

Additional differences among these categories involve the procedures used to make them. First Nation Land Codes provide the process for making Laws. There are no general legislative requirements for other subordinate documents, although they are sometimes subject to particular requirements such as those relating to natural justice.

The provisions of any Law must fit together in a coherent scheme with the administrative documents that it authorizes. This means that the authority to make administrative documents must be established by the Law, either expressly or impliedly.

PROVISIONS THAT SHOULD BE IN THE LAW

- ✓ What should be in the Law?

Generally speaking, the Law contains the fundamental policy or underlying principles of legislation that are unlikely to change. The following additional matters are usually dealt with in the Law:

- provisions that might substantially affect personal rights (search and seizure powers, penalties for serious offences, expropriation);
- provisions establishing the structure of public bodies or providing for appointments;
- controversial matters that should be addressed by the Council;
- amendments to Laws, including the definition of terms used in Laws.

PROVISIONS THAT SHOULD BE IN REGULATIONS

- ✓ What should be in regulations or administrative documents?

Regulations should deal with matters of an administrative (as opposed to legislative) nature that are subordinate to the main principles stated in the Law. As an alternative to regulations, consider delegating authority to Council to pass a resolution(s) to deal with:

- procedural matters, for example, how to apply for a licence;
- matters that are likely to need adjusting often, for example, prescribing interest rates, setting annual fishing quotas;
- technical matters involving scientific or other expertise;
- rules that can only be made after the department gains some experience in administering the new Law, for example, prescribing the time within which certain steps should be taken;
- fees to be paid for services or programs established in a Law.

OTHER MATTERS

The drafting instructions should specifically provide authority to do any of the following things and provide reasons for requesting this authority:

- substantially affect personal rights and liberties;
- determine important matters of policy or principle;
- amend or add to the enabling Law or other Laws;
- exclude the ordinary jurisdiction of the Courts;
- apply retroactively;
- sub-delegate decision-making authority from the First Nation Council;
- impose a charge on public revenue or a tax on the public;

- set the penalties for offences

INCORPORATION BY REFERENCE

- ✓ Should some matters be dealt with through documents or laws incorporated by reference?

Legislation does not have to spell out all the details of what it requires or provides. It can instead refer to other laws or documents and incorporate their contents without reproducing them. If this is to be done, consideration should be given to whether particular authorizing provisions are needed. Incorporation by reference is also subject to the law-making limits of the First Nation and as well as requirements relating to the accessibility and comprehension of incorporated documents. Legal advisers can provide guidance on these questions.

ADMINISTRATIVE INSTRUMENTS

- ✓ What should be dealt with through administrative instruments?

Many of the elements of a regulatory scheme should be dealt with in administrative instruments, such as permits, licenses, directives or contracts. These include:

- legal requirements that are to be imposed individually on a case-by-case basis;
- fees non-binding guidelines;
- internal directives on administrative matters.

RECIPIENTS OF POWERS

- ✓ Who should decision-making powers be given to?

    - Chief and Council
    - First Nation manager or program head
    - Land Committee
    - Other?

Judicial and quasi-judicial powers

- Judicial and quasi-judicial powers must be exercised with impartiality and the delegates who exercise them should have the qualifications and security of tenure to ensure their impartiality (dispute resolution rules).

Administrative powers

- Most administrative powers are given to Chief and Council who, in turn, have implied authority to authorize officials in the First Nation administration to exercise them.
- Law registries or other public registries can be given to specific officials – a Registrar
- Inspection and enforcement powers are usually given to classes of officials created to exercise these powers.

DRAFTING AND ORGANIZATION OF A LAW

TITLES

- ✓ What will be the title of the Law?

Each bill has a long title, which sets out the scope of the bill and gives a brief description of its purpose. The wording of this title should be left to the bill-drafting stage.

A bill to enact a new Law also has a short title, which is used to identify the Law when discussing it or referring to it in other legislation. A short title is also sometimes included in an amending Law that is likely to be referred to in other Laws. A short title should succinctly indicate the Law's subject matter. The following are examples of the long and short titles of an Law:

- An Law to provide for the regulation of traffic and vehicles on roads on First Nation lands;
- The Road Traffic Law.

Finalizing the short title should also be left to the bill-drafting stage. However, a working title is needed from an early stage and care should be taken to establish an appropriate title since it often becomes more difficult to change as the proposal moves forward.

Try to avoid words such as "First Nation", "Canadian," "National," "Federal" and "Government" because they make it harder to find the Law by its subject matter in a table of statutes.

PREAMBLES AND PURPOSE CLAUSES

- ✓ Should there be a preamble or purpose clause?

Preambles and purpose clauses should not be included in a Law without carefully thinking about what they would add to the Law and what they would contain. They should not be used to make political statements. They can have a significant impact on how the legislation is interpreted by the courts.

Preambles and purpose clauses perform different, but overlapping functions.

Preambles:

- often provide important background information needed for a clear understanding of the Law, or to explain matters that support its constitutionality;

- are placed at the front of the Law;
- should be drafted sparingly to avoid creating confusion about the meaning of the legislation.

Purpose clauses:

- indicate what the intended results of the legislation are;
- should highlight only the principal purposes;
- are included in the body of the legislation; and
- generally have a greater effect on the interpretation of legislation than preambles.

When a bill amends an existing Law, only the amendments themselves are added to the text of the Law when it is reprinted in a consolidated form. The preamble is not included. In order to ensure public awareness of, and access to, background information for an amending bill, a purpose clause may be considered as an alternative because it can be integrated into the consolidated legislation. Both preambles and purpose clauses must be carefully reviewed by legal advisors for appropriate language and content.

GENERAL APPLICATION PROVISIONS

- ✓ Should the application of the Law be confined or expanded in any way?

You should consider whether the Law should be applied to the First Nation itself, taking into account the following:

- binding the First Nation may entail additional legal liability for government activities;
- not binding the First Nation may render the legislation less effective if it governs an activity that the First Nation carries on to a significant degree;
- agents of the First Nation (for example, First Nation corporations) generally benefit from First Nation immunity, which may give them an advantage over private sector competitors.

An example is a building law. Does the First Nation have to comply with its own Building Law – obtain a permit, abide by building restrictions, zoning etc.?

FINANCIAL PROVISIONS

- ✓ Will there be provisions involving the collection or disposition of First Nation money?

A law may require that the First Nation pay from its own funds money to support a program or service. Once the money is allocated by Law, the First Nation has a legal obligation to spend that money and must amend the law to avoid non-compliance.

INFORMATION PROVISIONS

- ✓ Will the legislation restrict or require the disclosure of information?

The disclosure of information is affected by legal concepts of confidentiality and privilege. Provisions affecting the disclosure of information should be reviewed in light of these requirements and discussed with legal advisors.

The laws of other governments may also restrict the release or disclosure of personal or confidential information such as a Social Insurance Numbers.

SANCTIONS FOR NON-COMPLIANCE

- ✓ Will penalties or other sanctions be needed to ensure compliance with the legislation?

Most legislation is enforced by the imposition of sanctions for non-compliance. They range from penal sanctions, such as fines and imprisonment, to administrative sanctions, such as licence suspensions or disqualifications.

There are three basic methods of imposing sanctions:

- through the prosecution of offences in the courts;
- through offence ticketing schemes, such as the Contraventions Act;
- through the imposition of administrative monetary penalties or other administrative sanctions.

Provisions for the imposition of penal sanctions should reflect the principles set out in (sections 718 to 718.2 of) the Criminal Code. They should be reviewed to ensure that:

- they will be effective in obtaining compliance;
- there will be effective enforcement mechanisms, such as powers to conduct inspections or searches;
- the sanctions are appropriate for the seriousness of the noncompliant behaviour;
- the sanctions are variable enough to reflect the circumstances of the accused person in order to ensure that they receive equal treatment under the Law.

If administrative sanctions are to be imposed, a mechanism will be needed for their imposition. The creation of this mechanism raises many legal and policy choices to be considered, including choices about

- strict or absolute liability;
- the processes by which liability for and the amount of a sanction will be determined;

- the relationship of the administrative sanctions to criminal prosecution;
- the institutional structure of required impartial review.

It is essential that legal advisors be consulted in the development of sanctions and penalties to make certain the Law can be adequately enforced.

ENFORCEMENT POWERS

- ✓ Should the Law authorize searches, seizures and other action to support the prosecution of offences?

The Criminal Code provides a basic set of powers for the enforcement of legislation, including powers to make arrests, conduct searches and seize things. However, these powers may not be sufficient or they may have to be supplemented.

APPEALS AND REVIEW MECHANISMS

- ✓ Should there be procedures for appealing or reviewing decisions of administrative bodies created or authorized to make decisions under the Law?

Judicial Review

The Federal Court Act provides that the Federal Court may review the decisions of any "federal board, commission or tribunal." A First Nation decision can be reviewed as a result of this definition. This review concerns the legality of the decisions, as opposed to their merits. In most cases, applications for review are heard by the Trial Division of the Court. However, section 28 of that Act specifies bodies whose decisions are reviewed by the Court of Appeal.

Appeals

Appeals generally concern the merits as well as the legality of decisions. A right of appeal (or judicial review) exists only if it is granted expressly by the Act. Appeals may be taken to the courts (usually the Federal Court) or to an administrative tribunal created by the Act. A decision is not generally subject to judicial review if it is subject to appeal.

Review

It may also be appropriate to create other review mechanisms (in addition to judicial review and appeal). A decision-making body may be authorized to review its own decisions. Another body may be created to review the decision or an existing body (for example, the Chief and Council) may be authorized to review them.

DISPUTE RESOLUTION MECHANISMS

- ✓ Should there be mechanisms for the resolution of disputes arising under the legislation?

Consideration should be given to including provisions for the resolution of disputes instead of relying on the courts, whose procedures are usually costly and involved. Some examples of dispute resolution mechanisms are negotiation, mediation and neutral evaluation.

Alternative Dispute Resolution is provided for under the Framework Agreement.

EXTRAORDINARY PROVISIONS

- ✓ Does the proposal include any extraordinary provisions requiring specific Council attention and consideration?

Certain types of provisions should be specifically identified because they may be controversial. These sorts of provisions involve:

- the retroactive application of legislation;
- broad powers to grant exemptions from the legislation;
- power to sub delegate regulation-making powers;
- excluding the jurisdiction of the courts;
- expropriation of property;
- emergency powers;
- substantial restrictions on fundamental rights or freedoms; and
- regulation-making powers dealing with matters that are usually provided for in Laws

These matters are technical in nature and require that legal counsel provide opinions on the use of any of these matters having regard to the object of the proposed Law and compliance with laws of general application. For example, criminal legislation cannot be made retroactive.

TECHNICAL LEGISLATIVE MATTERS

SUNSET AND REVIEW PROVISIONS

- ✓ Should provisions be included for the expiry or review of the Law?

Caution should be taken when considering whether to include a "sunset" or expiration provision in a bill, since these provisions may result in a gap of legal authority if the new legislative regime cannot be brought into force in time. Similarly caution should be taken when considering inclusion of a provision for mandatory review of the Law within a particular time or by a particular committee given that this limits flexibility. Alternatives to these provisions should be fully explored before proposing to include them.

REPEAL

- ✓ Are there any Laws or regulations that have to be repealed as a result of the legislation?

If a new Law is proposed to replace an existing Law, the existing Law will have to be repealed. It may also be necessary to repeal particular provisions of related Laws as well as regulations.

CONSEQUENTIAL AND COORDINATING AMENDMENTS

- ✓ Are there any Laws or regulations that will have to be amended as the result of the legislation?

New legislation often affects provisions in other Laws. One of the most common examples of this occurs when the name of an Law is changed. References to the Law in other legislation must be amended to reflect the change.

You should also determine whether any other legislation amends the same provisions. If so, amendments will be needed to co-ordinate the amendments so that one does not undo the other.

TRANSITIONAL PROVISIONS

- ✓ Will any transitional provisions be needed to deal with matters arising before the Law comes into force?

Whenever changes are made to the law, consideration should be given to matters that arose under the previous law, but which are still ongoing after the new law comes into force. These matters include:

- regulations made under the previous law;
- rights or benefits granted under the previous law;
- appointments to offices;
- offences committed under the previous law; and
- judicial or administrative proceedings involving the application of the previous law.

COMING INTO FORCE

- ✓ When should the Law come into force?

When a Law comes into force, it begins to operate as law. A First Nation Law must include a provision concerning when it comes into force. There are a number of options. It may come into force:

- on a specified day;
- on a day dependent on a specific event (for example, the coming-into-force of another Law).

A Law may also provide that different provisions may come into force on different days.

CONCLUSION

Over the course of this workshop we have covered numerous law-making principles and practices. Through our brief dissemination of the Canadian Legal System, First Nation Law-Making Authorities, and the new abilities granted to First Nations under the *Framework Agreement on First Nation Land Management*, as well as our discussions on the need for, and drafting of, laws on reserve land, it is our hope that we have helped in that first step towards the creation of your individual laws.

Please note that at the end of this Law Making Guide, we have provided a summary of important points that you may want to consider when contemplating the creation of a new law. This summary includes a list of general legal and policy concerns, the process of drafting and organizing a proposed law, and technical points to consider prior to a law coming in to force. It reiterates that a law is not always the only instrument at your disposal. There are other legal instruments that you may find work better in varying situations, with the same legal effect.

It is important to remember that you are not alone when going through the process of developing new laws. The First Nations Land Management Resource Centre is available to help if you have any questions or concerns. We are here to assist you. Please feel free to contact us at:

First Nations Land Management Resource Centre

Address:
350 Terry Fox Drive, Suite 106
Kanata, Ontario
K2K 2W5

Telephone: (613) 591-6649
Facsimile: (613) 591-8373
E-mail: webadmin@labrc.com

You may also contact your workshop administrator, Chris Angeconeb, directly at:

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NOTES

LAWS, REGULATIONS AND POLICIES

Laws, regulations and policies are critical components of our society and government. They establish public priorities, help maintain order and safety, and play an important role in shaping the political and social fabric of communities at every level - from towns and cities to provinces and the nation.

LAWS

Laws are enacted by government bodies (First Nation, federal, provincial and municipal). Laws are a set of rules or norms of conduct, in other words, they describe what can or cannot be done and they must be obeyed by everyone including private citizens, groups and companies. Laws have a specific enactment procedure and are administered and enforceable through our system of courts. Laws are not easily changed or amended.

LAWS BY FIRST NATION COUNCILS

Framework Agreement on First Nation Land Management – Pursuant to the *Framework Agreement* First Nations Councils may enact laws respecting the development, conservation, protection, management, use and possession of First Nation reserve land and interests or land rights and licences in relation to those reserve lands. This includes any matter necessary or ancillary to the making of laws in relation to First Nation land.

For example, a First Nation may enact laws respecting zoning, land use, subdivision control and land development, environmental assessment and protection, the provision of local services, provision of services for the resolution of disputes in relation to land decisions. The *Framework Agreement* specifies laws that can be enacted by the Chief and Council acting alone but it also specifies laws that require community support (i.e. matrimonial real property, land use planning).

Indian Act – Even if a First Nation has a land code in effect, a First Nation may choose to enact bylaws under section 81 of the *Indian Act*. Pursuant to that section, a Council may make by-laws in a number of areas including traffic, observance of law and order, prevention of disorderly conduct and nuisances, removal and punishment of persons trespassing upon the reserve, etc.

The laws are enacted by the Chief and Council but must be approved by the Minister of Indian Affairs, even where the First Nation has a land code in effect. An intoxicant by-law can also be passed by Council pursuant to section 85.1 of the *Indian Act*; these laws do not require Ministerial approval but rather need community approval. Lastly, Councils may also pass a taxation by-law, with the consent of the Minister, pursuant to section 83 of the *Indian Act*.

REGULATIONS

Regulations – are a form of law or rule that are authorized under a law and subordinate to that law. Departments and administrators generally write regulations to implement and support the requirements of the law. Regulations deal with the details or technical matters that are not found in a law. Regulations can be easier to change and amend. Regulations are made by federal or provincial Departments of government and approved by Cabinet.

For example there are Regulations under the *Indian Act* concerning Band Council elections, timber, referendums. There are many Regulations under the *Fisheries Act* which set quotas and seasons for different species of fish and which are different in each of the provinces and territories. The *Canada Environmental Protection Act* also has many regulations concerning pollutants, emissions from various industries and similar subjects. Lastly, the First Nations Land Registry Regulations were established pursuant to the *First Nations Land Management Act*.

POLICIES

Policies – are a less stringent set of rules or strategies set in place by a government to improve standards. They are set in place to achieve certain objectives that are within the law or that need to comply with the law. Policies are easier to change and amend.

Opaskwayak Cree Nation

Land Law

OPASKWAYAK CREE NATION

USKI PA MI CHE KA WIN

(PROTECTING THE LAND)

Enacted this 11th day of April, 2016

Land Law 2016/001

Opaskwayak Uski-pa-mi-che-ka-win (Protecting the Land)

Table of Contents

Chapter 1. OUR VISION

I. The Opaskwayak Cree Nation asserts that we, the Opaskwayak *ininiwak*, have always governed ourselves according to *oneschekāwina*, our sacred laws. These laws were given to us from the Creator and were passed on to us through oral tradition.

II. Our understanding of the universe is based on *wakotowin* and the knowledge that all living things are interconnected. According to our worldview, *uski*, which means the land and everything connected to it, including the rivers, lakes, animals, insects, plants, and rocks, are alive and have a spirit. This philosophy is reflected in our language and our ceremonies and is why we refer to the land and everything on it as our relations.

III. The philosophy of *wakotowin* means that we have a responsibility to nurture and maintain of all our relationships, including our relationship with *uski*, which we depend on for our survival. Our relationship with *uski* is deeply rooted in respect and gratitude.

IV. Our identity, language, and culture are also inseparable from *uski*. We are a part of *uski*, and it is a part of us. We must therefore protect *uski* to preserve our land-based knowledge, our ceremonial sites, and our way of life.

V. The Opaskwayak *ininiwak* have known since the beginning of time that if we allow *uski* to be destroyed, we also destroy ourselves. Accordingly, our sacred laws tell us that our relationship with *uski* must be based on principles such as harmony and reciprocity. Our sacred laws tell us that we cannot simply take from the land and that something must also be given back in return.

VI. The Opaskwayak *ininiwak* also understand that *uski* must be shared for the enjoyment and benefit of all our people and preserved and protected for future generations.

VII. The Opaskwayak Cree Nation entered into a solemn Treaty arrangement with Her Majesty's Government of the Dominion of Canada by adhesion to Treaty 5. In signing the Treaty, the Opaskwayak Cree Nation did not give up the right to govern ourselves.

VIII. While we strive to follow our sacred laws and maintain a balanced and harmonious relationship with *uski*, we also govern ourselves in the spirit of progress and independence. We strengthen our community through social and economic growth providing a range of social, health, educational, and economic services necessary to support and enhance our standard of living.

IX. The Opaskwayak *ininiwak* have rights to the land, water and resources situated on our homeland, with which we have maintained a balanced relationship and existed in harmony since time immemorial. The Opaskwayak Cree Nation, through a vote of our membership held on June 17, 18, 19 in 2002, have enacted and ratified our own *Land Code*. The purpose of the *Land Code* was to set out the principles, guidelines and processes by which we will exercise control and management over our lands and resources consistent with the *Framework Agreement* on *First Nation Land Management Act*.

X. The *First Nations Lands Management Act* and *Framework Agreement* authorize the Opaskwayak Cree Nation to enact environmental laws in accordance with our *Land Code*.

THEREFORE THIS LAW IS ENACTED AS *OPASKWAYAK USKI-PA-MI-CHE-KA-WIN (PROTECTING THE LAND)* OF THE OPASKWAYAK CREE NATION as approved at a Community Meeting held to enact this Law.

Chapter 2. GENERAL

Section 2.01 Codification

(1) This law shall be codified as the *Opaskwayak Uski-pa-mi-che-ka-win* (the "Law") and supersedes and complements all conflicting provisions or laws of the Opaskwayak Cree Nation.

Section 2.02 Purposes

(1) The purposes of this Opaskwayak Uski-pa-mi-che-ka-win are:

(a) to ensure that OCN fulfills its duty to preserve and protect *uski*

(b) to develop an awareness and understanding of the sacred laws and traditions of the Opaskwayak *ininiwak*, related to maintaining a respectful and harmonious relationship with *uski*. Some of these include:

(c) to avoid the needless destruction of *uski*

(d) to avoid the needless waste of *uski*

(e) to avoid the overuse of *uski*

(f) to promote an understanding that *uski* is a gift to be shared to develop an awareness and understanding of the dependent nature of the relationship that the Opaskwayak *Ininiwak* have with *uski* and the recognition that *uski* sustains them

(g) to develop an awareness and understanding of the importance of reciprocity and the balance that must be maintained in interactions with *uski*

(h) to build an awareness and understanding of the traditional concept of *pastahōwin*, which constitutes crossing a sacred line and committing an unacceptable action towards *uski*

(i) to build an awareness and understanding of the related traditional concept of *pastahowin*, which is the *ininiwak* law of consequence. According to this concept, negative consequences will result when a person commits an unacceptable action towards *uski* or fails to act and protect *uski*

(j) to provide for the environmental protection and management of the lands of the Opaskwayak Cree Nation

(k) to promote and protect the quality of life and socio-economic development and ecological health of the Opaskwayak Cree Nation for the present and future generations

(l) to ensure that designated projects on OCN land are considered in a careful and precautionary manner to avoid significant adverse environmental effects

(m) to prohibit the unauthorized release of pollutants and actions of any third party having a significant adverse effect on the environment on Opaskwayak lands

(n) to promote cooperation between any level of government, *ininiwak* or non-*ininiwak*, with respect to environmental assessments

(o) to promote communication with surrounding Indigenous or non-Indigenous peoples with respect to environmental assessments

(p) to ensure that opportunities are provided for meaningful community input and consultation with regards to all community members such as men, women, youth and particularly the guidance of Elders

(q) to ensure that an environmental assessment is completed in a timely manner

(r) to encourage OCN governing bodies to take a balanced approach to its social and economic activities in a way that preserves its sacred relationship with *uski*

(s) to encourage the study of the cumulative effects or adverse environmental impacts of physical activities in a region and the consideration of those study results in environmental assessments

(t) complementary to and supports existing and future Opaskwayak Cree Nation environmental laws, regulations, codes, planning, programs and policies

(u) to provide for an environmental assessment process to govern the evaluation of projects on Opaskwayak lands, which are likely to have significant adverse environmental effects

(v) to provide for the recognition and utilization of existing review processes of the Opaskwayak Cree Nation that address environmental regulation on Opaskwayak lands

(w) to provide for pubic consultation in environmental decision making on Opaskwayak lands, while recognizing the decision making authority and jurisdiction of elected government at Opaskwayak Cree Nation, and

(x) to encourage Opaskwayak Cree Nation's environmental processes to be in accordance with Opaskwayak *Ininiwak* traditions, practices, and sacred laws relating to *uski*, including land use management and environmental protection.

Section 2.03 Harmonization

(1) It is the intent of the Opaskwayak Cree Nation to harmonize this *Law* with Acts of Parliament and relevant provincial legislation pertaining to environmental standards in accordance with the *First Nations Land Management Act* of Canada.

Section 2.04 Jurisdiction of the Opaskwayak Cree Nation

(1) This Law applies to all persons, including corporations, residents and non-residents, for violations of the laws of the Opaskwayak Cree Nation that occur on OCN land.

(2) This Law, or any law, regulation, program, or service associated with this Law is not intended to be a waiver or modification of any sovereign immunity or jurisdiction now enjoyed by the Opaskwayak Cree Nation.

(3) The Opaskwayak Cree Nation reserves the right to contest the jurisdiction of any Court, body, government or suit filed against it, except as expressly waived by the *Opaskwayak Uski-pa-mi-che-ka-win*.

(4) The Opaskwayak Cree Nation, the Council of the Opaskwayak Cree Nation, the Opaskwayak Cree Nation Environmental Division ("Authority"), and all other Opaskwayak Cree Nation employees, representatives and agents, who are performing their duties by carrying out any provision of this Law and any related regulations or laws, are immune from suit for damages in any court.

Section 2.05 Laws in force on Opaskwayak Cree Nation Lands

(1) In the case of an inconsistency or conflict with laws and regulations of other governments, the *Opaskwayak Uski-pa-mi-che-ka-win* and regulations as amended must apply to the Opaskwayak Cree Nation.

Section 2.06 Application of Law

(1) Where any federal Act or regulation or provincial Act or regulation or any other Opaskwayak Cree Nation law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law

Section 2.07 Law Making Powers

(1) The Opaskwayak Cree Nation may enact environmental protection and environmental assessment laws, including but not limited to those set out in the *First Nations Land Management Act* and the Framework Agreement, and those laws may include without limitation the following:

(a) Agriculture Activities Protection Law

(b) Air Quality Protection Law

(c) Environmental Emergencies

(d) Forestry and Resource Extraction

(e) Surface Water and Groundwater Protection Law

(f) Hazardous and Toxic Substances Law

(g) Ecological and Cultural Land Protection Law

(h) Sewage Treatment and Disposal Law

(i) Soil Contamination Law

(j) Solid Waste Management Law

(k) Any other areas of law that are deemed fit.

Section 2.08 Opaskwayak Uski-pa-mi-che-ka-win

(1) The *Opaskwayak Uski-pa-mi-che-ka-win* applies to the Opaskwayak Cree Nation. In the case of an inconsistency or conflict with Acts and regulations of other governments, *Opaskwayak Uski-pa-mi-che-ka-win* and regulations as amended will apply to the Opaskwayak Cree Nation.

Section 2.09 Definitions

(1) In this Law, unless the context otherwise requires, the following terms have the following definitions:

(a) "**adverse effect**" an impairment of or damage to the environment, including a negative effect on human health and safety

(b) "**alter**" to change or terminate a development or proposal, where the alteration causes or is likely to cause a significant change in the effects of the development or proposal on the environment

(c) "**ambient loading standards**" requirements that specify the maximum amount of pollutant(s) a building, work area, or a site may be allowed to have in its surroundings

(d) "**assessment**" an evaluation of a proposal to ensure that appropriate environmental management practices are incorporated into all components of the life cycle of a development

(e) **"Authority"** or **"Land Authority"** means the executive body that is delegated with the responsibility for OCN Land management pursuant to the OCN *Land Code* and *Land Laws*, as amended from time to time

(f) "**Council**" the duly elected Opaskwayak Cree Nation Chief and Council

(g) "**development**" any activity that causes or is likely to cause:

(i) a significant effect on the environment or will likely lead to a further development, which is likely to have a significant effect on the environment

(ii) a significant effect on the social, economic, and environmental health and cultural conditions that influence the lives of people of a community, to the extent that they are caused by environmental effects

(iii) the release of any pollutant into the environment

(iv) an effect on any unique, rare, or endangered feature of the environment, or

(v) the creation of by-products, residual, or waste products not regulated by Opaskwayak toxic substances laws and regulations

(vi) the use of any natural resource in such a way as to interfere with the use of that resource for any other purpose, or

(vii) the use of any natural resource in such a way as to have an adverse impact on another resource, and

(viii) the use of technology that is concerned with resource utilization and that may induce environmental damage.

(h) "**director**" the director of the Division appointed by the Land Authority

(i) "**discharge**" the addition of any pollutant to waters that affect the waters within the Opaskwayak Cree Nation's jurisdiction

(j) "**environment**" all plant and animal life, including air, land, and water

(k) "**Environment Officer**" a person authorized by the Division or Authority to implement the provisions of the Land Laws and includes any delegate or any peace officer

(l) "**land**" or "**lands**" and "**Opaskwayak Cree Nation lands**" includes soil, earth and terrain including surface and subsurface layers of earth and lands of the Opaskwayak Cree Nation falling within the jurisdiction of the *Opaskwayak Cree Nation Land Code*

(m) "**Land Laws**" the Opaskwayak Cree Nation Land Code ("Land Code"), and any other law enacted pursuant to Land Code including but not limited to the OCN Land Law for Establishing Land Authority, OCN Land Law For Land Use And Community Plan Including Natural Resources, OCN Land Law For Land Use and Community Plan Including Natural Resources, OCN Zoning Regulation, OCN Spousal Interest Land Law, and all other related laws as enacted or amended from time to time under the First Nations Land Management Act

(n) "***kestēneta uskī***" respect the land

(o) "***manacheta kituskinaw***" taking care our land

(p) "**Manager**" is the Lands Manager responsible for the day to day operations, administration and management of lands and resources of to the pursuant to section 4.1(c) of the *OCN Land Law for Establishing Land Authority*.

(q) "***kitaskīnaw***" our area, our land, where you live, includes everything in that area.

(r) "**OCN Law**" means any Law, Act, by-law, or regulation over which OCN has legislative authority to enact

(s) "***ochiniwin***" the *ininiwak* law of consequence that occurs when a sacred law has not been followed. A related concept to *pastahowin*

(t) "***oneschekāwina***" our sacred laws

(u) "***pastahowin***" the breaking of a sacred laws and wrongful act against *uski* or creation. See also related concept: *ochiniwin*

(v) "**person responsible for a pollutant**" is the owner of the pollutant or any other person having management or control of the pollutant

(w) "**person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or any other legal entity

(x) "**pollutant**" means any dredged soil, solid, incinerator residue, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, wrecked or discarded equipment, liquid, gas, smoke, waste, odour, heat, sound, vibration, radiation, or a combination of any of them that is foreign to or in excess of the natural constituents of the environment, and

(i) affects the natural, physical, chemical or biological quality of the environment or

(ii) is or is likely to be injurious to the health or safety of persons, property, or animal life or

(iii) interferes with the comfort, well-being, livelihood or enjoyment of life by a person

(y) "**pollution assimilative capacity**" refers to the ability of the environment or a portion of the environment (such as a stream, lake, air mass, or soil layer) to carry waste material without adverse effects on the environment or on users of its resources

(z) "**proponent**" a person who is undertaking, or proposes to undertake, a development on Opaskwayak Cree Nation lands

(aa) "**release**" includes to spill, discharge, dispose, spray, inject, inoculate, abandon, deposit, pout, empty, throw, place, exhaust, leak, seep or emit

(bb) "**waste**" any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate any air, land, or waters of the Opaskwayak Cree Nation.

(2) For greater certainty, terms shall have the meaning or definitions attributed to them in the *Framework Agreement on First Nation Land Management* and/or the *First Nations Land Management Act*, and/or the *OCN Land Code* and/or the *Individual Transfer Agreement*, except where same conflict with a meaning set out herein.

Section 2.10 The Authority

(1) This Law creates the Opaskwayak Cree Nation Environmental Division (the "Authority"). The Authority must govern the Division, which must be composed of members of the Opaskwayak Cree Nation. The Division must be the lead Opaskwayak Cree Nation agency to pursue the objectives of the Law to protect the quality of the environment and ecological health of present and future generations of Opaskwayak Ininiwak and to provide the opportunity for all citizens of the Opaskwayak Cree Nation to exercise influence over the quality of their environment.

Section 2.11 Authority is authorized

(1) Without limiting the generality of the objectives of the Authority, the Authority is authorized to:

(a) act as lead agency for Opaskwayak Cree Nation water permitting and enforcement, including but not limited to water rights, surface water, and underground water allocation and distribution, planning, contracts, and stream compacts

(b) revise the Law and related laws regulating the Opaskwayak Cree Nation environment

(c) act as lead agency for all regulatory functions including administrative functions, authorizations, and enforcement under this Law

(d) seek injunctions against any person in violation of any regulation authorized under this Law in the Courts

(e) direct investigations which the Authority determines are necessary to ensure compliance with this Law and the regulations

(f) issue, continue, revoke, amend, modify, condition, renew or refuse to renew permits, licences, certifications, and other authorizations as specific under implementing regulations

(g) issue, modify or revoke orders requiring actions as the Authority considers necessary to enforce this Law

(h) delegate any authority to the Manager

(i) enact rules applicable to activities and persons subject to the jurisdiction of the Opaskwayak Cree Nation, as they may consider appropriate to protect the environmental resources and public health and welfare

(j) administer and enforce this Law, including the regulations licences and orders made this Law, including the holding of hearings and issuing of orders and directives

(k) administer and enforce any other laws and regulations as determined by the Council

(l) develop and implement standards and objectives for environmental quality of the Opaskwayak Cree Nation in consultation with Elders, other Opaskwayak Cree Nation entities, departments, the public and other governments

(m) establish and maintain an effective method of public involvement and community input in environmental decision making

(n) utilize any research, reports, monitoring, studies and site investigations related to the acquisition of knowledge, data or technological understanding necessary to perform its mandate

(o) utilize technical, analytical services, and traditional indigenous knowledge (TIK) systems, and

(p) develop environmental management strategies and policies for the protection, maintenance, enhancement and restoration of general ecological health quality at Opaskwayak Cree Nation.

Section 2.12 Environmental awareness

(1) Mandate - for the purpose of carrying out the Authority's mandate related to preserving the quality of the environment, the Manager will issue:

(a) environmental quality objectives for pollution prevention or environmental control

(b) environmental quality guidelines specifying recommendations to support particular uses of the environment

(c) release guidelines recommending limits, including limits expressed as concentrations or quantities, for the release of substances into the environment

(d) codes of practice respecting pollution prevention or specifying procedures, practices, or release limits for environmental control relating to works, undertakings and activities during any phase of their development and operation, including the location, design, construction, start-up, closure, dismantling and clean-up phases and any subsequent monitoring activities.

(2) Scope of objectives - the objectives, guidelines, and codes of practice referred to in subsection (1) may relate to the following:

(a) the environment

(b) pollution prevention

(c) the recycling, conserving, reusing, treating, storing or disposing of substances or reducing the release of substances into the environment

(d) activities that affect or may affect the environment

(e) the conservation of natural resources and sustainable development, or

(f) the *oneschekāwina* and oral traditions of the Opaskwayak *Ininiwak* relating to *uski*.

(3) Consultation - in carrying out the duties under subsection (1), the Manager may offer to consult with Opaskwayak Elders, governing bodies of the Opaskwayak Cree Nation, members of Opaskwayak Cree Nation, traditional and non-traditional land users, hunters, trappers, gatherers, non-members who reside on Opaskwayak Cree Nation lands, the government of a province, the government of Canada, aboriginal governments, representatives of industry and labour, municipal authorities, or with persons interested in the quality of the environment.

(4) Authority may act - the Manager may act under subsection (1) if an offer to consult is not accepted or responded to 60 days after the day on which the Manager offers to consult in accordance with subsection (3).

Section 2.13 Publication

(1) The Authority must publish any objectives, guidelines, or codes of practice issued under this section, or give notice of them in a manner similar to the manner of notice outlined in s. 13.3 of the *Land Code* respecting community meetings, or any other means the Authority regards advisable in the circumstance.

(2) In order to increase environmental awareness at the Opaskwayak Cree Nation, the Manager may:

(a) Prepare and produce informational material respecting the environment of the Opaskwayak Cree Nation and make the material available to the public

(b) support and encourage the development of land based educational programs respecting environmental management through grants or other assistance.

Section 2.14 Appointment of a Manager

(1) The Council shall appoint a Manager for the purposes of this Law and the regulations.

Chapter 3. ENVIRONMENTAL ASSESSMENT, PERMITTING AND LICENCES

Section 3.01 No unauthorized release of pollutant causing significant adverse effect unless specifically authorized

(1) No person shall release or allow the release of a pollutant in an amount or concentration, or at a level or rate of release, that causes or may cause a significant adverse effect, unless expressly authorized or permitted to do so:

(a) under this Law or the regulations

(b) under another Act of the Legislature of Manitoba, an Act of the Legislature of Saskatchewan, or an Act of Parliament, or a regulation made under one of those Acts, or

(c) by a licence, permit, order, instruction, directive or other approval or authorization issued or made under this Law, an Act of the Legislature of Manitoba, an Act of the Legislature of Saskatchewan, or an Act of Parliament.

Section 3.02 Person has duty to report release that may cause or is causing significant adverse effect

(1) A person who releases or causes or allows the release of a pollutant that may cause, is causing or has caused an adverse effect must report the release, in accordance with the regulations, to:

(a) the Manager

(b) the person responsible for the pollutant, if the person reporting is not the person responsible for the pollutant but he or she knows or is readily able to determine the identity of that person and

(c) any other person who the person reporting knows or ought to know may be directly affected by the release.

Section 3.03 No release in excess of limits

(1) No person shall release or allow the release of a pollutant in an amount or concentration, or at a level or rate of release, that exceeds the limit that is expressly provided under this Act, another Act of the Opaskwayak Cree Nation, an Act of the Legislature of Manitoba, an Act of the Legislature of Saskatchewan, or an Act of Parliament, or in a regulation, licence, permit, order, instruction, directive or other approval or authorization issued or made under one of those Acts.

Section 3.04 Opaskwayak Environmental Review Panel

(1) The Authority may establish and appoint members to an Environmental Review Panel.

(2) The composition of an Environmental Review Panel must include community representation as follows:

(a) Include at least one member of the current Chief and Council

(b) Include at least one member from the Council of Elders

(c) Include at least one youth representative from Junior Chief and Council,

(d) Include at least one OCN member who is a man and another who is a women separate from and in addition to the representative referred to in subsection 2(a), 2(b) and 2(c) above, and

(e) Such further and other Environmental Review Panel members as the Authority sees fit, which may include experts if the Authority deems necessary.

(3) When requested by the Authority, the Environmental Review Panel must do one or more of the following in accordance with any terms of reference specified by the Authority:

(a) provide advice and recommendations to the Authority

(b) conduct public meetings or hearings and provide advice and recommendations to the Authority

(c) conduct investigations into specific environmental concerns and report back to the Authority

(d) act as a mediator between two or more parties to an environmental dispute and report back to the Authority.

(4) When requesting the Environmental Review Panel to do anything mentioned in subsection (3), the Authority may specify the terms of reference that the Environmental Review Panel is to follow in carrying out its duties.

(5) The Environmental Review Panel may make rules governing its procedure.

Section 3.05 Developments

(1) Developments

No person may construct, alter, or operate any development unless:

(a) the person files a written proposal with the Authority and obtains a valid licence from the Manager for the development, or

(b) the person is exempted under the Law or the regulations from the requirements of clause (a).

Section 3.06 Discretion to Classify Projects

(1) The Authority has the absolute discretion to classify developments as small, medium, or large projects.

Section 3.07 Discretion to Request Further Information Before Granting a Licence

(1) After receiving the description of a development proposal from the proponent under section 3.05, the Authority may require the proponent to provide an amended description, environmental assessment, or any other information due to an incomplete or insufficient description before granting a licence.

Section 3.08 Exempt Development

(1) Where a development is subject to an existing approval process that:

(a) involves interested governing bodies of Opaskwayak Cree Nation

(b) includes public consultation, and

(c) addresses environmental issues.

(2) The Authority may, by agreement with the Council, exempt that development from this section.

Section 3.09 Community Input

(1) The Authority must ensure that there is a process for community input to receive comments with respect to a proposed development. The Authority may pass by regulation procedures respecting receiving, compiling and archiving community input for any proposed development.

Section 3.10 Public consultations by proponent

(1) When considering the proposal, the Manager and the Authority may take into account any public consultations on the proposed development conducted by the proponent.

Section 3.11 Agreements with jurisdictions other than Opaskwayak Cree Nation

(1) If a proposed development that requires an environmental licence under this Law may have an environmental impact of concern to a jurisdiction other than Opaskwayak Cree Nation, the Authority may, with the approval of Council and subject to the regulations, enter into an agreement with that jurisdiction:

(a) to establish a joint assessment process in which members of a panel are jointly appointed by the Authority and other governments who are parties to the agreement, or

(b) to provide for the use of that jurisdiction's assessment process for the purpose of gathering the information necessary to make a decision to issue or refuse a licence under this Law.

Section 3.12 Equivalent assessments

(1) The Authority may not enter into an agreement unless:

(a) the Authority is satisfied that the agreement provides for an assessment that is at least equivalent to the assessment that would otherwise be required under this Law, and

(b) the agreement provides for:

(i) notification of the public in Opaskwayak Cree Nation about the filing of the proposal through the use of the public registry and by way of advertisements in the affected provinces

(ii) comments from members of the public related, at minimum, to the proposal, the guidelines for the assessment of the proposal, the assessment, and the review of the assessment

(iii) community input or consultations at Opaskwayak Cree Nation about the proposal by a panel established for the purposes of the assessment process

(iv) a joint assessment process under Section 3.11(1)

(v) a requirement that the Authority be satisfied that each proposed member of the panel is unbiased and free of any conflict of interest relative to the proposal and has special knowledge or experience relevant to the anticipated environmental effects of the proposal

(vi) a program relating to the provision of financial assistance to members of the public participating in the assessment process when in the opinion of the Authority such a program is desirable

(vii) an opportunity for the Council to require further information before making a decision regarding licensing if, in the opinion of the Council or the Authority, the assessment process has not produced sufficient information on which to base such a decision, and

Section 3.13 Proponent's obligation to pay costs

(1) The proponent of the development must pay to the Authority any costs that the Authority incurs in relation to an environmental assessment, community meeting, or follow-up monitoring and mitigation measures, which are related to the exercise of the Authority's responsibilities.

(2) The costs and amounts that the proponent must pay under subsection (a) constitute a debt due to the Opaskwayak Cree Nation and may be recovered as such in any court of competent jurisdiction.

Section 3.14 Participant funding by proponents

(1) The Authority may, in accordance with the regulations, require a proponent of a development that is subject to an assessment under this Law to provide financial or other assistance to any person or group participating in the assessment process.

Section 3.15 Proponent to notify Manager or Authority of alteration in development

(1) Where a proponent:

(a) has submitted a proposal for a development in, but is not yet in receipt of an environmental licence or

(b) has received an environmental licence for a development and the proponent intends to alter that proposal or the development as licensed that does not conform to the terms and conditions or that is likely to change the environmental effect,

the proponent must notify the Manager or the Authority, as the case may be, of the proposed alteration before proceeding with it.

Section 3.16 Dealing with minor proposed alterations

(1) Where the Director or the Authority has received notice of a proposed alteration of a Development and the potential environmental effects resulting from the alteration are insignificant or will be accommodated by the ongoing assessment process. The Manager or the Authority may in writing, and with such terms and conditions as he or she considers advisable, give approval to the proponent to implement the alteration.

Section 3.17 Record of minor alteration decision

(1) If the Manager or Authority approves a proposed alteration, he or she must file in the public registry:

(a) a copy of the approval under subsection 3.16 and

(b) the name of a contact person in the Authority who can give information to the public about the proposed alteration.

Section 3.18 Dealing with major proposed alterations

(1) Where the Manager or the Authority has received notice of a proposed alteration in accordance with section 3.15, and the proposal is other than as described in section 3.16, the Manager or Authority may direct the proponent to seek approval for the proposed alteration as a proposal in accordance with sections 3.05 or 3.12, as the case may be.

Section 3.19 Decision on proposed alterations

(1) The decision of the Manager or Authority with respect to the disposition of the alteration must be communicated to the proponent within 21 days from the receipt of the request for the change.

Section 3.20 Prior approval of alteration required

(1) No person may proceed with an alteration in a development until the person has received approval from the Authority.

Section 3.21 Compliance with limits

(1) No person may proceed with a development for which that person has received a licence from the Authority, except in accordance with the specifications, limits, terms and conditions set out in the licence.

Section 3.22 Development not to proceed without licence

(1) No person may proceed with a development for which a licence has been refused by the Authority

Section 3.23 Order deemed to be a licence

(1) Where prior to the coming into force of this Law, a person received an approval from the Authority under the laws, procedures and acts of the Opaskwayak Cree Nation, it is deemed to be a licence issued under this Law.

Section 3.24 Licence binding on purchase of a development

(1) An order, licence, or permit issued under this Law or the regulations is also binding on a person who may purchase or otherwise acquire custody or control of the development in the future.

Section 3.25 Development deemed where disagreement

(1) The Authority, or such other body appointed by council, may decide whether any project, industry, operation or activity, or any alteration or expansion thereof is a development.

Section 3.26 Maintaining registry of developments

(1) The Authority must maintain a registry for each proposal containing:

(a) a summary, prepared by the proponent in form and details as approved by the Authority

(b) the disposition and status of each proposal

(c) a copy of the environmental licence, where applicable

(d) a copy of the assessment report

(e) justification for not accepting the advice and recommendations of the Environmental Review Panel, where applicable

(f) justification for refusing to issue an environmental licence, where applicable, and

(g) such other information as the Authority may from time to time direct.

Section 3.27 Suspension in extraordinary circumstances

(1) Where a person is in possession of a licence issued under this Law, that person may request the Authority to suspend or vary all or any part of the licence where extraordinary circumstances warrant. The Authority may comply with the request subject to such limits, terms and conditions as the Authority deems necessary and suspend or vary any or all of the licence for a period not exceeding 14 days, as specified by the Authority.

Section 3.28 Suspension of licence and restoration of licence

(1) Where the Authority is satisfied that adequate steps have been taken by a licensee whose licence was suspended, withdrawn, or cancelled, the Authority must restore the licence to remedy the situation.

Section 3.29 Cancellation or suspension of permits, etc.

(1) If the Court so orders, any permit or other authorization to which the order relates is cancelled unless the Court makes an order suspending it for any period that the Court considers appropriate.

Section 3.30 Retention

(1) Information in the registry is to be maintained for a minimum of five years.

Section 3.31 Lands Authority may refuse or suspend permit

(1) The Land Authority may refuse to issue a permit or other authorization under this Act, or may cancel such a permit or other authorization, if the applicant or the holder has been convicted of an offence under this Act.

Section 3.32 Emergency action

(1) The Manager or an Environment Officer may take, or cause to be taken, any emergency action that he or she considers necessary to protect the environment if he or she believes that:

(a) a pollutant may be released, is being released, or has been released, and

(b) the release may cause, is causing or has caused a significant adverse effect on the environment.

Section 3.33 Action by Council to minimize danger

(1) Notwithstanding anything in this Act, where the Land Department determines it is in the public health of Opaskwayak Cree Nation to take emergency action to alleviate an environmental emergency or where a health emergency as declared by the Council exists, the Lands Department may authorize the taking of such action as is deemed necessary by the Council to mitigate the emergency or alleviate the threat without reference to the normal approval or licencing processes pursuant to this Act.

Section 3.34 No injunction against the Council

(1) No injunction lies against the Council or the Department to restrain or prevent the Council or any person acting under the authority of the Council, including the Department, the Manager, or an Environment Officer, from taking action.

Chapter 4. ORDERS, VIOLATIONS AND COMPLIANCE

Section 4.01 Environment Officers

(1) The Authority may designate Environment Officers for the purposes of this Law, or any provision of this Law persons or classes of persons who, in the Authority's opinion, are qualified to be so designated in the administration of a law respecting the protection of the environment in accordance with the traditional protocol(s) of OCN. Environment Officers shall have the powers and authority of an Enforcement Officer in accordance with Chapter III of the *OCN Enforcement Act.*

(2) The Manager shall have the powers and authority of an Enforcement Officer in accordance with Chapter III of the *OCN Enforcement Act.*

Section 4.02 Order may be issued

(1) If the Authority:

(a) determines with or without a hearing that there exists a violation of any provision of OCN Law or of any order, permit, or control regulation issued or promulgated under authority of OCN, or

(b) believes that:

(i) a pollutant may be released or has been released, and

(ii) the release may cause or has caused an adverse effect on the environment

the Manager may take actions and issue Orders as outlined in subsection 2 below.

(2) Without limiting the discretion or remedies available, the Manager in accordance with subsection 1 may take any or all of the following actions:

(a) Directing any person to take any action that the Manager considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or omission that constituted the offence

(b) Directing any person to prepare and implement a pollution prevention plan or an environmental emergency plan incorporating the traditional practices of OCN

(c) Directing any person to carry out environmental effects monitoring in the manner established by the Authority or directing the person to pay, in the manner prescribed by the Court, an amount for the purposes of environmental effects monitoring

(d) Directing any person to implement an environmental management system that meets a recognized Canadian, international or traditional OCN standard

(e) Directing any person to have an environmental audit conducted by a person of a class and at the times specified by the Manager and directing the person to remedy any deficiencies revealed during the audit

(f) Directing the person to pay, in the manner prescribed by the Manager, an amount for the purposes of conducting research into the ecological use and disposal of the substance in respect of which the offence was committed or research relating to the manner of carrying out environmental effects monitoring

(g) issue orders to any person to clean up any material which he, or his employee, or his agent has accidentally or purposely dumped, spilled or otherwise deposited in or near water resources which may pollute them

(h) issue a cease and desist order, which shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which acts or practices complained of must be terminated

(i) Issue an Environmental Protection Order in accordance with section 4.03 below,

(j) Directing any person to pay to Opaskwayak Cree Nation an amount of money that the Manager considers appropriate for the purpose of promoting the conservation or protection of the environment

(k) Directing the person to pay, in the manner prescribed by the Manager, an amount to environmental, health or other groups to assist in their work in the community where the offence was committed

(l) Directing the person to pay, in the manner prescribed by the Manager, an amount to the local educational institution including for scholarships for students enrolled in studies related to the environment

(m) Requiring the person to comply with any other conditions that the Manager considers appropriate in the circumstances for securing the person's good conduct and for deterring the offender and any other person from committing offences under this Law

(n) Any other Order or actions the Manager deems necessary in the circumstances.

Section 4.03 Protection order may be issued

(1) An environmental protection order may require the person named in the order – by a deadline set out in the order – to take any steps that the Manager considers necessary to protect the environment, including one or more of the following:

(a) Investigate the situation

(b) Measure the rate of release or the ambient concentration, or both, of the pollutant

(c) Take any action specified by the Authority to prevent or reduce the release of the pollutant

(d) Minimize or remedy the effects of the pollutant on the environment

(e) Restore the area affected by the release of the pollutant to a condition satisfactory to the Authority, taking into consideration the oral traditons and traditional land users affected.

(f) Monitor measure, contain, remove, store, destroy or otherwise dispose of the pollutant, or reduce or prevent further releases of the pollutant

(g) Install, replace or alter any equipment or thing in order to control or eliminate the release of the pollutant

(h) Report on any matter ordered to be done, in accordance with directions set out in the order.

Section 4.04 Consequences for failing to comply

(1) If a person fails to comply with any directions or orders made in accordance with sections 4.02 or 4.03 above, the Manager or an environment officer may, without further notice to the person

(a) carry out the measures specified in the order, or cause them to be carried out, and

(b) be accompanied by any other persons, and use any equipment, required to carry out the measures specified in the order.

Section 4.05 Variation, etc. of order

(1) The Authority may, by order, vary, extend, suspend or terminate an order.

Section 4.06 Authority must immediately communicate order to residents

(1) Immediately after making an order, the Authority shall cause details of the order to be communicated by the most appropriate means to the residents and land users of the affected area of Opaskwayak Cree Nation.

Chapter 5. Appeals

Section 5.01 Written appeal within 30 days to the Manager

(1) Except as may be otherwise provided in this Act, any person who is affected by any order, instruction, or permit of an Environment Officer may, within 30 days from the date of issuance of the order, instruction or permit, appeal to the Manager in writing.

Section 5.02 Manager to decide within 30 days

(1) Where an appeal is made to the Manager, the Manager must within 30 days after the receipt of the appeal affirm, rescind, or amend the decision being appealed and notify the appellant of the disposition of the appeal within seven days from the date of the decision.

Section 5.03 Appeal to the Lands Department from decision of Manager

(1) Except as may be otherwise provided in this Law, any person who is affected by:

(a) the issuance of a licence or a permit by the Manager or

(b) the refusal by the Manager to issue a licence or permit or

(c) any decision, order, instruction, or directive of the Manager or

(d) the imposition of limits, term and conditions in a licence or permit issued by the Manager;

May file an appeal in writing with the Authority that includes the reasons for the appeal and relevant facts within the following periods:

(i) In the case of a decision, issuance, refusal, order, instruction, or directive or the imposition of limits, terms and conditions or the disposition of the appeal, within 30 days of the date of the decision

(ii) In the case of a licence that sets out a limit, term, or condition that is to take effect on or be imposed at a future date and specifies that an appeal is to be taken within a specified period, within the period so specified.

Section 5.04 Disposition of appeal by the Department and notice period

(1) Where an appeal is made to the Lands Authority, the Council may:

(a) in the case of an appeal of the Manager's decision not to recommend a public meeting or hearing on a proposal, request the Environmental Review Panel to hold a public meeting or hearing on the proposal

(b) refer the matter back to the Manager for reconsideration

(c) make any decision that in his or her opinion ought to have been made by the Manager, or

(d) quash or vary the decision under appeal, or dismiss the appeal.

Section 5.05 Appeals of Lands Authority decision

(1) A person who is affected by a decision of the Authority may file an appeal in writing with the Council. The appeal must be set out the reasons for the appeal and must be filed within 30 days after the date of the decision of the Authority.

Section 5.06 Council may reopen appeal with new evidence

(1) In the event that the appellant has new evidence that was not previously considered, the Council may reopen the appeal process and consider the new evidence with respect to the disposition of the appeal.

Section 5.07 Appeal is not a stay

(1) An appeal filed does not suspend the decision appealed against, but the Council may suspend the operation of the decision, in whole or in part, until the appeal is disposed of.

Section 5.08 Appeal process

(1) The Council shall hear an appeal from a decision of the Authority within 30 days of filing of the notice of appeal and shall deliver its decision within 10 days of the hearing of the appeal. The Council shall not be bound by any rules of evidence. The decision of the Council shall be final and binding. Any appeal to a Court of Law shall be founded in law and not in fact.

Chapter 6. Offence Provisions

Section 6.01 Offence

(1) Any person who contravenes or violates any provision of this Law or the regulations or fails to comply with any provision of any order, licence, permit or order issued by the Authority, the Manager, or an Environment Officer made pursuant to this Law or the regulations, is guilty of an offence.

Section 6.02 Separate offence for each day that contravention occurs

(1) Where a violation of any provision of this Act or the regulations occurs, the offender is guilty of a separate offence for each day that the violation continues.

(2) Where a failure to comply with an order, licence, permit, approval or instruction of the Authority, the Manager or an Environment Officer, or an order of a judge made for more than one day, the offender is guilty of a separate offence for each day that the contravention, violation or failure continues.

Section 6.03 Other penalties

(1) A judge may, in addition to a fine or other penalty, require the convicted person to do any or all of the following things:

(a) to refrain from committing any further offence under this Law, or from causing further environmental damage

(b) to clean or restore the environment from damage caused by the offence

(c) to pay damages or make restitution to any person who suffered damages by the offence as the judge considers appropriate

(d) to pay an additional fine in an amount no greater than the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, despite any maximum fine provided elsewhere.

Section 6.04 No person shall obstruct

(1) No person may obstruct or attempt to obstruct an Environment Officer, Manager or any other person in the performance of their duties or the exercise of their authority under this Law or any regulation under this Law

Chapter 7. Liability & Immunities

Section 7.01 Immunity

(1) No action for damages may be brought against present or past Opaskwayak Cree Nation Council, Law Enforcement Officer, members, employees, or agents for:

(a) any statement, action, or omission of that person in the performance of that person's duty, or

(b) any alleged neglect or default of that person in the performance of that person's duty.

(2) Subsection (1) does not provide a defence if an Opaskwayak Cree Nation:

(a) Council member, Enforcement Officer, Environment Officer, member, employee, or agents has, in relation to the conduct that is the subject matter of the action, been found guilty of dishonesty, gross negligence, malicious or wilful misconduct, or

(b) the cause of action is libel or slander.

Section 7.02 Liability of Opaskwayak Cree Nation Chief and Council and Employees

(1) Present or past Opaskwayak Cree Nation Council, members, employees, or agents are not liable for any damages or other loss sustained by any person, or to the property of any person, as a result of neglect or failure to discover or detect any contravention of this Law or any other Opaskwayak Cree Nation Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Opaskwayak Cree Nation Law.

Section 7.03 Actions against Opaskwayak Cree Nation

(1) All actions against Opaskwayak Cree Nation for the unlawful doing of anything that:

(a) is purported to have been done by the Opaskwayak Cree Nation under the powers conferred by this Law or any Opaskwayak Cree Nation law, and

(b) might have been lawfully done by the Opaskwayak Cree Nation, if acting in the manner established by law.

(2) Actions must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

Section 7.04 Damages

(1) Opaskwayak Cree Nation is in no case liable for damages, unless notice in writing setting out the time, place, and manner in which the damage was sustained, is delivered to the Opaskwayak Cree Nation within two (2) months from the date on which the damage was sustained.

(2) In case of the death of a person injured, the failure to give notice or its insufficiency is not a bar to the maintenance of the action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

(a) there was a reasonable excuse, and

(b) Opaskwayak Cree Nation has not been prejudiced in its defence by the failure or insufficiency

Chapter 8. Regulatory Powers

Section 8.01 Regulations may be passed by Council

(1) For the purpose of carrying out the provisions of this Law, Council may make regulations, guidelines, procedures, and orders that:

(a) set out environmental management practices that are consistent with the *oneschekāwina* of OCN to be incorporated into the design, construction, operation, closure or rehabilitation of a development

(b) promote whether it be the means of harvesting, gathering, hunting, fishing, trapping or any traditional land use practice which promotes and enriches the culture and livelihood of the *Ininiwak*

(c) classify small, medium, or large developments and set out assessment processes, guidelines, and procedures

(d) classify certain geographic areas of the Opaskwayak Cree Nation by pollution assimilative capacity and set ambient loading standards for those areas

(e) set out policies for environmental management, as they relate to economic development, conflicting land or resource use, OCN Zoning by-laws, and industrial density

(f) limit the number and types of developments that may cause adverse cumulative effects that may be permitted to be constructed on OCN Land

(g) govern or prohibit any use, activity, or thing that may cause adverse effects

(h) govern or prohibit the construction, alteration, modification, or expansion of developments

(i) set environmental quality objectives, the process for setting of those objectives, and the use of those objectives

(j) exempt developments from the requirements of this or any other Law

(k) set out the procedures to be followed with regard to licences or permits required under the Law or the regulations

(l) set service fees payable for the disposition or administration of licences or permits

(m) set the requirement of evidence of financial responsibility in the form of insurance, indemnity bond, or other guarantee for persons owning or operating developments that will or may cause environmental damage

(n) reduce the adverse effects of the design, location, construction, alteration, and operation of developments

(o) reduce pollution or other environmental damage of the design, construction, alteration, operation, and installation of systems, processes, or works including but not limited to waste disposal grounds, landfills, sewage collection and treatment, sewage or industrial sludge handling and disposal, incinerators, and recycling systems

(p) set standards for the methods of collection, treatment, distribution, and disposal of pollutants

(q) specify the location of waste disposal grounds and landfills, the construction and placement of structures on land located within such distance of waste disposal grounds and landfills as is specified in the regulation, whether or not the waste disposal grounds and landfills are abandoned or not

(r) limit or prohibit the release of pollutants

(s) the type, quantity, or conditions respecting resource utilization from any development

(t) control the release of pollutants resulting from the burning of vegetation or the remains of vegetation in connection with agricultural activities

(u) restrict or prohibit the use of any product or substance that may pollute or damage the environment

(v) respecting the disposal, reuse, or recycling of any product or residual flow or packaging offered for sale in the province, which may become a component of a waste stream

(w) require certain developments to register with the Authority

(x) require a permit for the construction or operation of certain developments, and the issuance or withdrawal of the permits by the Director or Environment Officer and the limits, terms and conditions to be included in the permits issued by the Director or the Environment Officer

(y) set the methods of testing samples and prescribing the equipment, apparatus, or structures to be used for taking samples

(z) respecting livestock production operations

(aa) declare equivalent standards or status

(bb) prohibit litter and regulate the disposal of litter

(cc) control the use, storage, handling, and disposal of pesticides and containers

(dd) control the use, storage, handling, and disposal of petroleum products, including oil

(ee) prescribe the forms for use under this Law

(ff) prescribe the manner of giving notice of any decision or matter under this Law

(gg) set the amount, terms, and conditions for grants and the applications for grants

(hh) prescribe the information that must be contained in a description of a designated project

(ii) set the procedures, requirements and time periods relating to environmental assessments, including the manner of designing a follow-up program

(jj) include the identification of records or information to be posted on the Registry Internet site and the establishment and maintenance of project files referred to in section 3.26

(kk) charge fees for providing copies of documents contained in the Registry

Chapter 9. AMENDMENTS

Section 9.01 Amending Process

(1) This Law may be amended by Chief and Council in the following manner:

(a) a recommendation from the Land Authority, supporting or requesting the amendment

(b) where the proposed amendment is substantial in nature, it may be referred to a community meeting for input

(c) where an amendment is technical in nature or where urgent or following community input may be enacted by a written Resolution of Chief and Council

(d) a written Resolution of Chief and Council amending this Law shall be filed with the Land Authority Registry.

Section 9.02 Notice of Amendment

(1) A notice of amendments shall be publicly posted and such reasonable efforts as the Land Authority deems necessary will be undertaken to provide notice to individuals off reserve.

Participants in First Nation Environmental Governance	
Body or organization	**Role in Environmental Governance**
Chief and Council	Each First Nation will decide how best to involve Chief and Council in Environmental Governance. As representatives of the community that often have long experience in reserve issues and operations, Chiefs and Councils can provide important direction to environmental governance initiatives. First Nation staff should ensure that Council is fully informed about proposed environmental management actions, and should seek direction on matters of policy, law development, work programs, and budgets. Council needs to be engaged in important government-to-government contacts with local, provincial, and federal representatives and agencies, and often takes a lead role in community meetings. Chief and Council engagement in, and support for, environmental initiatives is crucial, particularly issues affecting a FN's risk and liability.
Lands Governance Director (LGD)	The LGD will be responsible for managing the technical planning and implementation of environmental governance. The LGD will participate in: • Developing and implementing environmental governance laws, regulations, guidelines, policies and procedures associated with environmental management • Designing environmental assessments and overseeing their preparation • Preparing annual budgets for environmental management responsibilities • Preparing and delivering environmental outreach materials to community members through direct communication, workshops, brochures, or other methods. • Hiring legal counsel and environmental experts as required

Participants in First Nation Environmental Governance	
Body or organization	**Role in Environmental Governance**
Environment Manager	The Environmental Manger will play an important role in developing and implementing environmental governance policies and procedures. As the person with technical responsibility for implementing provisions of environmental governance, the Environmental Manager will be responsible for many activities such as: • Monitoring and reporting on environmental conditions on reserve • Assisting in the enforcement of environmental laws • Overseeing conduct of environmental site assessments and remediation of contaminated sites • Enforcing environmental laws and supporting adjudication proceedings, and • Hiring environmental consultants as required If there is no Environmental Manager, then the LGD will take on those duties.
Lands Committee	Depending on the Lands Committee's role (which may be outlined in the First Nation Land Code or in a Terms of Reference) a Lands Committee could have a major role in environmental governance. For example, they may help draft laws and regulations or conduct community information and approval sessions with community members.
Other First Nations departments	Other First Nation departments may be involved in environmental governance, including: • Public Works (e.g., building a road close to a spawning ground; use and management of road salt) • Housing (e.g., residential underground storage tanks leaking; solid and liquid waste management practices) • Health Department (e.g. may do water sampling and analysis)

Participants in First Nation Environmental Governance	
Body or organization	**Role in Environmental Governance**
Community members	Community members' role in contributing to environmental governance may be outlined in the First Nation Land Code or environmental law. Community members contribute their traditional knowledge, culture, spirituality, and values about lands, resources and the community. Community members should become familiar with new environmental laws, regulations, and policies. The success of environmental programs depends on personal and business actions being consistent with the First Nation's environmental goals, other aspects of the environmental management regime, particularly practicing good environmental stewardship.
Consultants and contractors	First Nations often retain consultants to help prepare Environmental Management Plans. Legal counsel will aid the First Nation to draft the laws necessary to support environmental governance. A First Nation should budget for involvement of consultants and lawyers as part of implementing an environmental governance program. Technical Consultants will conduct, review and analyze environmental studies. Specialists in various fields may be needed to deliver environmental protection measures, support environmental assessments, conduct inspections, monitor environmental conditions on reserves, help interpret or enforce laws, and provide other services associated with environmental governance.
Lease holders or other on-reserve businesses	Business owners will need to consider how their land and resources related activities affect the environment. Lessees will need to be aware of, and adhere to, the environmental clauses within their leases. Both groups will need to understand First Nation environmental laws regulations, policies and procedures that may affect them.
Other First Nations and First Nation organizations	FNs organizations, such as tribal councils may provide environmental governance services and can foster collaboration among First Nations on environmental issues and programs.
Land Advisory Board-Resource Centre	The Lands Advisory Board Resource Centre (LABRC) can provide no-cost technical advice and assistance. The LABRC also provides support services to First Nations that are developing and delivering an environmental governance regime in the context of the Framework Agreement.

Participants in First Nation Environmental Governance	
Body or organization	**Role in Environmental Governance**
Provincial agencies	First Nations may choose to involve provincial agencies in developing and implementing environmental protection measures. The Framework Agreement notes that provincial agencies may be involved in harmonizing Environmental Assessment procedures.
Indigenous and Northern Development Canada (INAC)	INAC will continue to have authority over some aspects of the environment even after the adoption of an environmental management regime (e.g. Capital Projects, funding for certain environmental operations).
Other federal agencies (Department of Fisheries & Oceans, Health Canada, etc.)	Government agencies, such as Fisheries and Oceans Canada and Environment Canada will continue to be responsible for applying federal laws on reserve (e.g., the *Fisheries Act* and *Species at Risk Act*), and participate in resource management planning and in the conduct of Environmental Assessments of federally-regulated projects.
Municipal and regional governments	A FN may choose to involve local governments of adjacent jurisdictions in development and implementation of laws, regulations and policies regarding the environment. For instance, utilities (storm drains, water lines, sewers and roads) often cross reserve boundaries, and operation and maintenance responsibilities may be shared between a FN and local government. A FN may choose to adopt laws and regulations that are similar to, or consistent with, those of neighbouring jurisdictions. Such consistency may improve communications among jurisdictions and reduce obstacles to encouraging on-reserve development. A FN may also consider contracting for the services of adjacent local governments. For instance, environmental inspection, road maintenance, or other services may be more reasonably obtained by contracting with an adjacent municipality than by developing those capabilities within a FN. Conversely, FNs that develop such capacities may be able to market them to other governments.

PHASE I ENVIRONMENTAL SITE ASSESSMENT

WHAT IS A PHASE I ENVIRONMENTAL SITE ASSESSMENT (ESA)?

A **Phase I ESA** identifies the potential presence of contaminants in soil, sediment, groundwater or surface water through site inspection and review of reports and historical information. Sampling and analysis of soil or water typically is not conducted in a Phase I ESA. The key aspects of a Phase I ESA are records review, site visits, interviews, information evaluation, reporting and identifying "areas of potential environmental concern" (APECs), which may be studied further in a Phase II and III ESA.

Indigenous and Northern Affairs Canada (INAC) usually funds Phase II and III ESAs after a Land Code has been enacted. The limitation of Phase I ESA is that it only identifies **potential** contamination. It is important that a Phase I ESA identifies all APECs, because this list will establish the extent of potential contamination that has occurred while reserves were managed by INAC. Phase II and III ESAs (which involve sampling) are needed to determine whether contamination actually exists, its extent, and implications for remediation. The parties to the Phase I ESA are the First Nation (FN) and Canada (INAC). Lands Advisory Board provides assistant when requested.

WHY IS PHASE I ESA REQUIRED IN THE DEVELOPMENTAL PROCESS?

Canada provides a FN, at its request, with "all existing information, in Canada's possession, respecting any potential or actual environmental problems with the proposed FN land". Such existing information may be inadequate to fully describe the condition of reserve lands, so Canada's policy is to fund the preparation of Phase I ESAs.

WHY IS PHASE I ESA IMPORTANT TO THE INDIVIDUAL AGREEMENT?

Because the Phase I ESA helps to describe the environmental condition of reserves and identifies areas for further investigation, results of the Phase I ESA will be summarized in the Individual Agreement.

Because Phase I ESAs do not determine the actual presence or extent of contamination on reserve land, a FN should ensure that its Individual Agreement and work plan contain a commitment by Canada to assist the FN in identifying contaminated sites on reserve and a timeline to remediate them. Therefore, before

approving an Individual Agreement, a FN should meet with INAC to confirm responsibility for further studies and remediation of identified contamination. It is imperative that the nature and scope of further environmental work be included in the work plan before a FN signs its Individual Agreement.

WHAT WORK IS TO BE CARRIED OUT DURING A PHASE I ESA?

INAC has a Statement of Work (SOW) template that outlines the scope of the work to be carried out during a Phase I ESA, including records review, interviews (e.g. with elders), site visits, evaluation of information and reporting, project management, project scheduling, insurance and safety, standards requirements, special requirements, submission of proposals, proposal evaluation criteria and budget. A FN may which to identify additional ESA tasks to be conducted.

WHO OVERSEES THE PHASE I ESA WORK?

A Joint Management Committee (JMC) is usually established to oversee and manage the Phase I ESA work. The JMC's responsibilities are outlined in the Statement of Work (SOW). The SOW also outlines the responsibilities of the qualified Environmental Assessor that will be carrying out the Phase I ESA.

The JMC committee is comprised of FN and INAC representatives. A FN may wish to retain their own technical advisor to participate in JMC deliberations.

OVERVIEW OF PHASE II AND III ENVIRONMENTAL SITE ASSESSMENTS (ESA)

Developmental First Nations (FNs) would have done a Phase I ESA. Phase I ESA only suggests potential or actual contamination, based on available reports and field observation. No physical sampling (e.g., of soil or water) is conducted, so a Phase I ESA cannot confirm the presence or extent of contamination on reserve land. Furthermore, a Phase I ESA report is accurate only at the time of assessment, and may become outdated if conditions at a site change.

A FN ideally would have ensured that its Individual Agreement and work plan contain a commitment by Canada to assist the FN in identifying contaminated sites by conducting a Phase II ESA and a workplan and timeline to remediate them in a Phase III ESA. Without a Phase II ESA, a FN will not be sure about the extent of contamination on its lands, and without a Phase III, it will not know the cost of remediation.

Phase II and III investigations may be required to support, refute or extend the Phase I ESA findings and fulfill Canada's obligations set out in the Individual Agreement environmental work plan.

WHAT IS A PHASE II ESA?

Phase II ESA is an intrusive investigation and assessment of a property's surface and subsurface media. Phase II studies typically investigate "Areas of Potential Environmental Concern" (APECs) identified by Phase I ESAs to determine whether they are "Areas of Environmental Concern" (AECs). A Phase II ESA investigates and confirms the environmental condition of the APECs and determines the site characteristics (chemicals, contamination, and concentrations) present. This information is necessary to file a Record of Site Condition (RSC) and perform a Risk Assessment, which assesses and physical pathways to human exposure, ecological effects, and the potential for off-site migration of contaminants.

Phase II ESAs are intended to examine the areas identified during a Phase I ESA and to determine whether contamination actually exists on a site. The Phase II ESA focuses on gathering specific information as required about an APEC and can include the following tasks:

- Sampling of surface and subsurface soil, groundwater and surface water, soil vapour (along with laboratory analysis), sediment, and collection of terrestrial or aquatic plant samples;
- Aboveground and underground fuel storage tank content and tightness testing, asbestos containing material (ACM) sampling, polychlorinated biphenyl (PCB) sampling and identification, geomagnetic or geophysical surveys;
- Directly measuring conditions such as noise levels or radiation;
- Using environmental fate or transportation models to evaluate the potential migration of the contamination.

The result of a Phase II ESA is the determination of the need for a remedial work plan and may also reveal whether conditions or events at the site are causing or likely to cause adverse effects that require notification of regulatory authorities. The results of Phase II analyses are typically compared with federal guidelines and provincial standards for contaminant concentrations. If contaminant concentrations exceed these established levels, then AECs may be identified.

The typical scope of work may include:

- collection of soil, groundwater, surface water, sediment, or vapour samples,
- chemical analysis of samples for relevant parameters,
- surveying the site and establishing groundwater flow direction,
- determining the appropriate criteria to which the results must be compared,

- interpretation of data, possibly including modeling, qualitative risk assessment, or development of a Conceptual Site Model,
- preparation of a clear, comprehensive report documenting the findings and presenting a conclusion regarding the environmental condition of the site.

Phase II ESAs are guided by the Canadian Standards Association (CSA) Standard Z769 (1998) - **CAN/CSA-Z769-00**

The CSA standard establishes the principles and practices that are applicable to a Phase II ESA. The standard is intended to provide a consistent framework and minimum requirements for conducting Phase II ESAs that can accommodate broad regulatory and liability requirements, and can address pertinent site-specific conditions. The CSA framework involves developing a sampling plan, preparing for and undertaking an investigation for sampling and measuring, and interpreting and reporting on the information gathered. This Standard is an updated version of the previous CSA Standard Z768.

WHAT IS A PHASE III ESA?

Phase III ESA examines the need for, and methods of, remediating identified contamination on a site. If delineation was not conducted during the Phase II investigations, Phase III sampling is conducted to delineate the physical extent of previously-identified contamination. Phase III investigations may involve intensive testing, sampling, and monitoring, “fate and transport” studies and other modeling, and the design of feasibility studies for remediation and remedial plans. A Phase III study normally involves assessment of alternative cleanup methods, risk management strategies, and costs and logistics. Phase III reports detail the steps needed to minimize human or ecological risk, to perform site cleanup, and conduct follow-up monitoring for residual contaminants.

If a Phase II confirms contamination and determines that unacceptable levels of contamination exist, a Phase III Remedial Investigation should be carried out to determine what approach should be taken to clean up or contain the contaminants present at the site.

LAND CODE SUMMARY

There are 9 Sections in this Land Code:

Part 1: Preliminary Matters

This introduces the Land Code to the reader and defines how the document should be read. There is a description of the terms that will be used in the document, an explanation of where the authority to govern comes from, what the purpose of the Land Code is and what lands the Land Code applies to (the reserve land description).

Part 2: First Nations Legislation

This section outlines what law making power the First Nation will have out of the Land Code and the procedure for how new land laws will be created and implemented (including where they will be published and when they take effect) under the Land Code.

Part 3: Community Consultation and Approvals

This section defines how and what the process is for implementing various elements of the Land Code. For example, approving a land use plan or enacting land laws requires community approval under the conditions defined in this section. Furthermore, this section touches on the procedures for a "meeting of members", and the ratification process and approval thresholds are for passing laws or other matters such as: i.e. development of a heritage site, amendment to the Land Code, or any other matter.

Part 4: Protection of Land

This section outlines some of the key protections the Land Code offers- and the special conditions by which the First Nation could expropriate land (only by community approval through ratification vote) and the conditions for calculating compensation, but also the rights that may not be expropriated. This section also defines the necessity for a law on heritage sites, and ensures no development or amendment can be made to the land use plan to get rid of a heritage site created under this law. Finally this section states that an agreement is necessary for the First Nation to exchange land with another party (i.e. First Nation, Province, and Federal Government) and there are conditions to be met for lands to be received (such as the need for an appointed negotiator, freedom of receiving additional compensation or land in trust, and federal commitment to add any lands to the existing reserve base).

Part 5: Accountability

This section really has to do with how the Land Code is administered by First Nation including the rules for a "conflict of interest" and the duty to report and abstain from participation in land matters where there is a conflict. Also in the context of conflict of interest this section defines the non-application of these rules for common interests, dealing with disputes and penalties.

This section also applies to how financial management, audit and financial reporting will be conducted – establishing separate lands bank accounts, signing officers, bonding, signing

authorities, and the adoption of the fiscal year for operations and reporting. This section also goes into detail about the specific rules for a year to year lands budget and financial policy. The final part of this section is about financial records and the member's right to access information on year to year financial statements, audit report, the annual report on lands, and the penalties for interference or obstructing the inspection of these records by another member- and the coordination and roles responsible for creating and making these documents public (i.e. auditor and council).

Part 6: Land Administration

This section starts off by establishing the Lands Committee - it defines the composition, eligibility requirements, selection method, term of office and dealing with vacancies. This section also defines how revenue monies from lands will be handled (from fees, leases etc.), how the registration of land interests (leases, permits, licences) will be conducted and how it is captured through First Nations Land Registry System (FNLRS) and a duplicate register if directed.

Part 7: Interests in Land

This section relates more to the operation of the First Nation's lands administration and how it will address existing interests (e.g. CPs) and new land related interests (e.g. CPs or allocations). This section defines that there will need to be written documents, standards created, and that consent will be necessary to process any granting or disposing of assignments of land. This section defines the rights of CP holders and the procedure for cancelling a CP, the transfer and use of a CP, and the situation when a CP holder ceases to be a member. This section also defines the limits on mortgages and seizures, transfers upon death, and the principles for spousal property law (to be made into a Matrimonial Real Property law)

Part 8: Dispute Resolution

This section is created to address how possible disputes that could arise by any benefactor (e.g. First Nation member) of the Land Code and how the process for addressing disputes will be conducted. For example, an adjudicator would be established to resolve disputes in relation to lands unless members could come to some resolve by way of an informal resolution of disputes. The section sets out the powers for the adjudicator, adjudication procedures and decisions and the member's ability to appeal these decisions and expectations around costs.

Part 9: Other Matters

This section defines four (or more) items to address common issues such as:

1. Liability- the need for director and officers insurance for Lands Committee members,
2. Offences and enforcement- what are offences and what is the penalty,
3. Amendments to Land Code- specifically the process for amending this Land Code,
4. Commencement- defines when the actual start date will be.

(Insert name of FN) INDIVIDUAL AGREEMENT SUMMARY

(**Insert name of FN**) is one of a number of First Nations (FN) in Canada who is party to the *Framework Agreement Agreement on First Nation Land Management* (*Framework Agreement*). The federal government is also a party to the agreement and ratified it through the *First Nation Lands Management Act* on June 17, 1999.

The *Framework Agreement* and legislation enable these FNs to take control over the management and administration of their reserve lands from Aboriginal Affairs and Northern Development Canada (AANDC). In order to do this each FN must enter into an Individual Agreement with AANDC. This Individual Agreement sets out the specifics of the transfer of management of reserve lands from Canada to the (**Insert name of FN**).

The Individual Agreement for the (**Insert name of FN**) is summarized as follows:

Section 1 – Interpretation

This section defines the terms that are used in the Individual Agreement, including identifying the reserve lands that will be transferred.

Description of (Insert name of FN) Land

This section identifies the lands that are subject to this Individual Agreement:

> (**Insert Legal Land Descriptions here as recorded in the approved Legal Land Description Report**)

Section 2 – Information Provided by Canada

This section confirms that Canada has provided the (Insert name of FN) with all of the information in its possession regarding dispositions of reserve lands, environmental issues on reserve lands and any similar information. Land interests and dispositions are set out in “Annex C”.

The information collected during the Phase I Environmental Site Assessment (ESA) that was conducted in (insert date of Phase I ESA work) is summarized in “Annex D”. The environmental issues were identified in this report and an action plan for the Phase II Environmental Site Assessment is also included.

(**Insert the potential areas of environmental concerns as identified in the Phase I ESA report**)

This section also includes any other information in Canada's possession on monies payable, including information on any arrear of rent as the date of transfer as set out in "Annex E".

Section 3 – Transfer of Land Management

This section provides that Canada will transfer the management and control of reserve lands to the (**Insert name of FN**) on the effective date of the Individual Agreement. (**Insert name of FN**) will then begin managing and controlling its reserve lands and natural resources under its Land Code.

Section 4 – Transfer of Rights

This section transfers all of Canada's rights, obligations, powers and authorities in or under all previous interests or licenses affecting reserve lands to the (**Insert name of FN**).

Section 5 – Operational Funding

This section obligates Canada to provide the (**Insert name of FN**) with funding and resources for managing reserve lands. The amount of funding is set out in "Annex A". The amount of FN operational funding is based upon a variety of factors as outlined in the Memorandum of Understanding on Funding (October 19, 2011) that would give (**Insert name of FN**) (**Insert the operational funding amount**) for the first fiscal year.

Section 6 – Transfer of Revenues

This section obligates Canada to transfer to the (**Insert name of FN**) any monies that it holds in trust for the use and benefit of the (**Insert name of FN**) and any revenues it receives from reserve lands. Canada will transfer to the (**Insert name of FN**) the amount of (**Insert the amount to be transferred**) that is currently held in the (**Insert name of FN**) Revenue Account. The procedures for the transfer of funds are set out in "Annex B".

Section 7 – Notice to Other Persons

This section requires Canada to notify any non-members who hold an interest in reserve land that management of the reserve lands will be transferred to the (**Insert name of FN**) and that the (**Insert name of FN**) will collect the revenues from those interests in the future. This notice must be given within thirty days of the ratification of the Land Code.

Section 8 – Interim Environmental Assessment Process

This section provides that until the (**Insert name of FN**) establishes its own Environmental Assessment process, the *Canadian Environmental Assessment Act* will

apply. The procedure for Environmental Assessments during this period is set out in "Annex F".

Sections 9 and 10

These are standard formalities regarding this amendment of the Individual Agreement, giving formal notice and documentation.

Section 11 – Dispute Resolution

This section provides that the dispute resolution provisions of the *Framework Agreement* apply to any disputes between Canada and the (**Insert name of FN**) regarding the Individual Agreement.

Section 12 – Date of Coming into Force

This section provides that the Individual Agreement comes into force at the same time as the (**Insert name of FN**) Land Code.

STANDARD OPERATING PROCEDURES FOR THE ENVIRONMENTAL MONITORING OF MARINE AQUACULTURE IN NOVA SCOTIA

Fisheries and Aquaculture

March 2011

TABLE OF CONTENTS

Standard Operating Procedures for Environmental Monitoring of Marine Aquaculture Sites in Nova Scotia

1. INTRODUCTION

The following information describes the sampling methodologies for the environmental monitoring of finfish farms in Nova Scotia (NS). This document will also serve as the basis for Nova Scotia shellfish monitoring. Provided in this document are a series of sampling instructions, laboratory guides, and field templates that are designed to assist farm operators. This document in intended to be a template for Nova Scotia marine monitoring that will be reviewed yearly to include changes and innovations to field methods, technologies and regulatory approaches.

This protocol originated in 2002 as part of the document *Design of the Environmental Monitoring Program for the Marine Aquaculture Industry in Nova Scotia* (Smith et al., 2002) and has evolved with recent advancements in science and technology. Starting field work in 2003 as a pilot project, Nova Scotia Department of Fisheries and Aquaculture (NSDFA) has regularly monitored each marine finfish aquaculture operation throughout the province as part of the Environmental Monitoring Program (EMP). A number of revisions were incorporated to keep the EMP up-to-date, relevant and effective. Recognizing that the EMP is a mandatory requirement and integral part of the lease and license process, the eventual goal of this pilot study was to task individual farms with the responsibility to conduct their own EMP and to provide results to NSDFA as required. All farm operators must now adhere to this program and follow these instructions below as standard operating practices for environmental monitoring.

If you have any questions, contact Mark TeKamp at (902) 424-6010 or tekampmc@gov.ns.ca

2. LOCATION AND NUMBER OF SEDIMENT SAMPLING STATIONS

Through the EMP, monitoring has been conducted in and around aquaculture sites throughout the province. Using findings from historical data collected since 2003, sampling locations are determined based on environmental performance, species type (finfish/shellfish) and level of production. This is detailed in the companion paper *Environmental Monitoring Program Framework for Marine Aquaculture in Nova Scotia* (EMP Framework; PNS, 2010).

2.1 Finfish Monitoring Stations

There will be a minimum of three monitoring stations within a lease. Stations will be evenly spaced on either side of centre along the longitudinal axis beginning with a station at either end of the axis (see Figure 1). If production is greater than 450,000 fish or rotated within the site, then additional stations will be assigned. If the grid is more than 2 rows, stations will be further offset to occur in each row.

Table 1 details the level of monitoring required based on production levels at each site.

Table 1: Number of Sampling Stations Required

Maximum # of fish during production cycle	Number of sampling stations required (not including reference stations)
0 to 450,000	3
450,001 to 600,000	4
600,001 to 750,000	5
750,001 to 900,000	6
900,001 to 1,050,000	7
1,050,001 to 1,200,000	8

The location and number of sampling stations varies with stocking and configuration. An example of Level 1 monitoring based on the above table, for a farm with 750,001 to 900,000 fish, is shown in Figure 1.

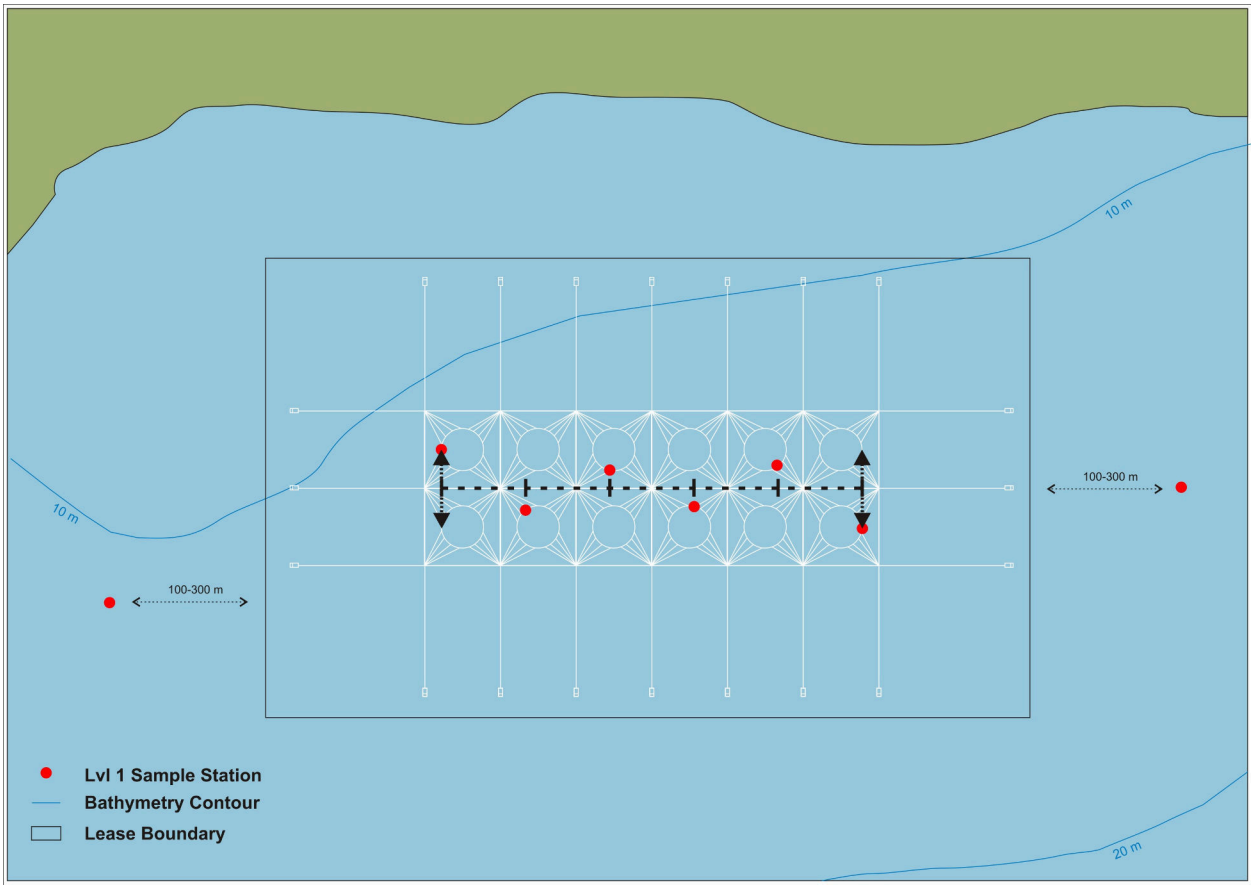

Figure 1: Location and Number of Sampling Stations (example scenario)

Accuracy of sampling stations is critical to program efficacy with the goal of achieving consistency and repeatability. For this reason, sampling vessels must be moored during

collection of replicates. Samples will be collected on the cage edge (between boat and cage if using grab) and will target the downstream side of the highest production cages in that region of the site. Using a GPS device, a waypoint will also be logged at every sampling location (NAD83 in decimal degrees or UTM metres) **and submitted in editable electronic format to NSDFA, preferably in Excel**.

In addition to stations for Level I, the sampling stations with historically high values (ie. >3000 µM) must be re-sampled every Level I EMP trip until stations return to oxic conditions. All repeat sampling should occur within 10 m of the original coordinates. Any station further than 10 m shall be considered a new station. In cases with multiple stations within relative proximity, NSDFA may reduce number of stations required for re-sampling. Historic high stations are not required as part of Level II.

If necessary, revised sampling station locations may be determined once on-water field work begins. Where cage gear prevents access to the pre-assigned monitoring stations, or no high-density stocked cages are within 10 m of the coordinates provided, sampling will take place as close as possible to the station without risking entanglement of equipment. As with any other sampling station, another waypoint must be logged at the new location. Record the distance and direction from the proposed waypoint. Those coordinates, with explanation of spatial variation, must be provided with the submission of the final environmental summary in editable electronic format. A template is provided in Appendix A1.

2.2 Shellfish Monitoring Stations

Shellfish leases may require fewer sampling stations per site than finfish leases. For active shellfish farms, sampling will be consistent with the stations required for finfish sites. However, monitoring will be scaled to level of risk (considering production levels, percent of bay volume and historical environmental performance). For inactive shellfish farms with no production, no sampling stations will be required. Refer to Figure 2: Risk Based Decision Making Matrix of *Environmental Monitoring Program Framework for Marine Aquaculture in Nova Scotia* for elaboration on appropriate monitoring actions.

Alternative levels of sampling are proposed for shellfish aquaculture sites that have repeatedly shown no or limited potential for impact. These include a reduced sampling requirement to video monitoring only and/or sampling repeated at extended spatial and temporal intervals (fewer stations, every 5 years etc).

2.3 Reference Stations

There will be at least 2 reference stations per lease. Reference stations will be 100 – 300 m from the site in an alongshore axis both upstream and downstream of the site. Reference samples must be collected from a similar depth and sediment type to lease stations.

In the event that the off-site distance criterion cannot be achieved, reference samples should be collected from a new sampling station with water depths similar to that of the lease.

2.4 Monitoring Levels

Level I – As outlined in Figure 1 and described in Section 2.1-2.3.

Level II – Additional samples required are based on Level I outcomes (i.e. if site is classified as Hypoxic B or Anoxic). See Figure 2 below. Porosity and organic matter data are not required for Level II sampling. A consistent rationale for re-sampling will be applied based on the following sampling objectives:

a) Better delineating the affected area. This will include sampling (cage edge) on all adjacent cages immediately around the Level I sample station(s) that had recorded elevated sulfide numbers > 3000 µM.

b) Better delineating the zone of influence. This will involve collecting sediment samples from the 4 corner compensator buoys and additional compensator buoys at no more than 200 m spacing along the outer edge of the cage configuration.

The Level I and II stations will be combined to determine state of the benthic environment within the lease. However, Level I results will be the sole determinate for site classification purposes.

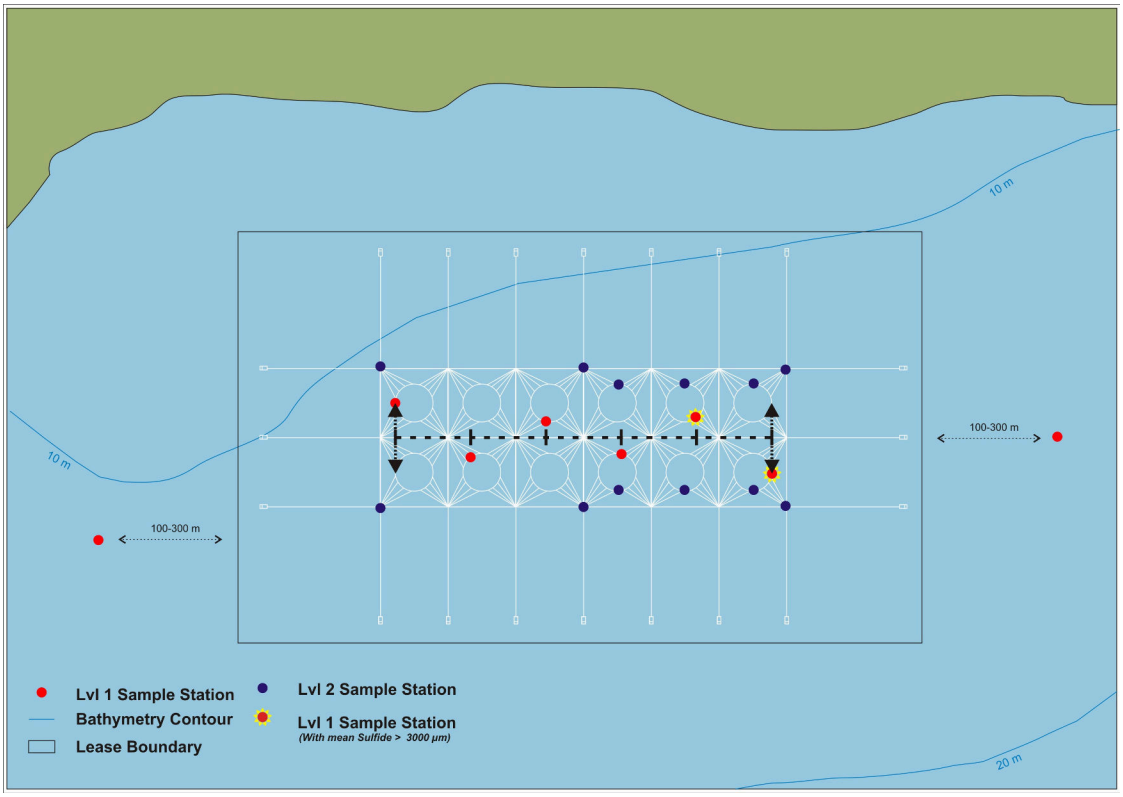

Figure 2: Typical Location of Level II Sampling Stations (example scenario)

Level III – Variation of Level II repeated to capture seasonal variation (likely in winter or early spring) and to more closely monitor affected areas. Requirements for Level III follow-up will to be determined by NSDFA in discussion with site operator.

3. VIDEO RECORDING METHODOLOGY

This is the only method of data collection that can be consistently and repeatedly collected at all marine sites. It provides the best qualitative (and possibly quantitative) method of assessing and comparing benthic conditions around the province and serves as a basis for further evaluation of benthic conditions.

Video will be collected at every sampling station for all levels of monitoring. Video will be obtained before grab samples to show undisturbed sediment. Each video must include a 360º panorama (or as close as possible) of the water surface view plane prior to submersion. Video requirements include continuous footage of initial descent until impact with sediment on the seafloor. Once at the bottom, the camera will hover just off bottom and bounce several times (ie. frame or diver hand contacts sediment to show sediment consistency). Each station requires a minimum of 2 minutes of benthic footage covering a minimum of 5 m^2 of bottom with drift of vessel, movement along the vessel deck, or diver swim.

Video imagery of the sediment surface will be obtained at all designated stations using a submersible video camera (drop camera or diver remote) and recorded continuously using an acceptable high-resolution format (eg. AVI). The field of view will include a visible frame measuring between 0.5 and 1.0 m on either side (i.e. 0.25 to 1.0 m^2) with a scale bar. Each station will be clearly labeled on the video by using a placard (date, sample station number) prior to submersion. The drop camera video shall be equipped with a digital overlay detailing real time latitude and longitude of the sampling location. Diver video will be accompanied by coordinates of swim.

Video image quality must be sufficient for a trained biologist to recognize and identify sediment type, condition, and any benthic macrofauna/flora present. Backup lighting may be required in reduced visibility in order to obtain acceptable image quality.

The video, with chapters sorted by sampling station ID, shall be submitted according to the timelines presented Section 5 of the EMP Framework.

4. SEDIMENT SAMPLING METHODOLOGY

Sampling of benthic sediments will be conducted to determine: total dissolved sulfide, redox potential, porosity and sediment organic matter. Although sulfide is the main regulatory determinant, other 3 variables are used to validate and confirm accuracy of sulfide results via Benthic Enrichment Index (BEI).

Samples can be collected using either diver or grab. The sampling methodology for using a diver to collect sediment samples is outlined in Wildish *et al*., (1999, 2004). Additional comments on diver coring methodologies were also submitted to NSDFA by Dr. Barry Hargrave (2009) and summarized below. This submission can be made available if requested. The main goal is to use an appropriate sampling method, or device, which maintains an intact sediment-water interface.

4.1 Remote Grab Collection

NSDFA has approved the Eckman grab for sample collection. This method has proved effective for most sediment conditions specific to the Nova Scotia aquaculture industry. With other grab types there is a risk of disturbing the seafloor or collecting a compromised sample. To ensure acceptable results, NSDFA approval must be obtained prior to the use of other methods for sediment sample collection.

If using a grab, 1 plastic syringe core, e.g. similar to Becton-Dickson 5 cc (Fisher # 14-823-35), will be used to remove surface sediment from 3 points on the sediment surface. This is done by pushing the cut-off syringe into the sediment then gently withdrawing sample while taking care to avoid collecting air spaces in the plastic tube. It is **critical** that sediment samples are obtained from the top 2 cm of sediment only. The first point will remove 2 cm, the second point will remove 2 cm and the third point will remove 1 cm. Ensure no head space or air cavities are present in the syringe. This syringe, containing 5 cm of sediment from 3 points within the grab, will be kept dark and chilled (not frozen) until processed. Each plastic core syringe shall be labeled with a sample ID sticker.

This process will be repeated twice more for a total of 3 syringes from 3 different grab replicate extractions at each sampling station (3 total) to achieve a desirable sampling resolution over the 5 m^2 area.

4.2 Diver Core Collection (comments by Hargrave, 2009)

When locations and sampling conditions allow cores to be collected by divers, cores should be inserted into the bottom to minimize disturbance of the sediment surface. As mentioned earlier, NS geochemical measurements are to be made on the surface layer (0-2 cm) of undisturbed sediment. Open-ended cores should be slowly inserted into the bottom with a gentle twisting action to minimize sediment compression. Cores should have drilled holes at various depths to allow lateral sampling of the surface layer closest to the sediment-water interface using 5-mL cut-off plastic syringes. The length of sediment cores obtained will be determined by the grain size and water content of the deposits being sampled. For example, if 30 cm long acrylic core tubes are used in soft, mud-rich sediments these should be ~50% full with a 15 cm sediment column and 15 cm of overlying water. Once sediment is in the core, the diver seals the upper end with a cap to maintain overlying water above the undisturbed sediment surface. Vertically intact cores must be brought to the surface in an upright position. Transfer of sediment-filled cores between small boats and shore or into vehicles should be done gently to minimize disturbance of the sediment-water interface. Clarity of overlying water can be used to visually confirm that the sediment surface is as undisturbed as possible. Intact sediment cores should be stored upright in an ice-filled cooler or placed in a refrigerator (5 ºC) until analysis.

In addition, the following recommended practices should be applied to all sample collection:

- Rinse all sampling equipment with saltwater between deployments to remove all debris and sediment.
- Siphon (not pour) the overlying water from the sample. It is important to maintain an

undisturbed sediment sample and avoid getting surface water in syringe.
- If sample is spoiled at any point during the collection (e.g. equipment malfunction, human error), repeat steps from beginning to collect undisturbed sample.
- If bottom type does not allow for sample collection after 5 attempts the sampling team should move to another station location within the lease. Collect new waypoints and make note to indicate non-standard sampling.
- When moored to static structure take care not to repeat exact sampling position of initial grab.

5. FIELD OBSERVATIONS

Field reporting presents an overview of the site and benthic conditions on and around a farm site. There is a requirement to collect and submit field observations. A sample log sheet is provided in Appendix A2. Often, these log sheets will be used for quality assurance during NSDFA review.

Field observations will include details such as locations, date, names of people involved with sample collection. Water depth and temperature, at the time of sampling, are to be recorded as well.

A description of the site and any other notes of interest should also be recorded. These notes could include, but not be limited to, weather issues, whether vessel is anchored or tied to cage, sampling difficulties, etc.

Notes as to sediment type/description, flora/fauna and depth of the sediment sample within grab (e.g. 0-30 cm) should be written on log sheet for every grab sample. Diver cores should be photographed with image copies included in the submission to NSDFA.

6. ANALYSIS OF SEDIMENT SAMPLES

Information contained within this section provides guidance for the analysis of sediment samples for the Nova Scotia EMP. The procedures outlined below are based on information found in Wildish *et al*. (1999) and Wildish *et al*. (2004). Recent revisions were made according to discussions and feedback from the March 2010 NS EMP Technical Review and Laboratory Workshop held in Halifax, NS (Grant, 2010).

The NSDFA EMP lab uses the Accumet AP63 Portable pH/Ion Meter, Orion 9616BNWP Sure-Flow™ Combination Silver/Sulfide Electrode 9616BNWP and Orion Epoxy Redox/ORP electrode 9678BNW for measurement of redox and sulfide. *Use of comparable probes and meters is acceptable. Consult the manufacturers instructions for proper details on set up and use of probes and meter.*

If any of the chemicals or electrodes/instrumentation used for these analyses are other than those outlined in the above references (i.e purchased from a supplier), provide supplier name and product number.

A sample of the data recording sheet can be found in Appendix A3 respectively. Please retain original record of sampling data.

6.1. Redox analysis (Eh)

Oxidation-reduction potential (redox), measured in millivolts (mV), is a measure of oxidation-reduction potential in sediments, and an indirect indicator of aerobic versus anaerobic conditions. This measure is less reliable than sulfides, but used to support the findings.

Electrode accuracy check

Standardization of the redox electrode is to be performed at the beginning AND end of each set of analyses and to be recorded on the data recording sheet.

Accuracy check to be performed using Zobell's A and B standard solution (see Wildish *et al.*, 1999 for preparation of standard solutions). Include notes regarding any calibration problems on data sheets.

1. Place electrode in a sample of Zobell's A standard (should give a reading of +234 (±9) mV)

2. Place electrode in a sample of Zobell's B solution (should give a reading of +300 (±9) mV).

There should be a 64 ± 9 mV difference between the readings.

Redox measurements

Triplicate samples taken from each sampling station will be analyzed for redox in accordance with the protocol outlined below.

The redox electrode will be filled with 4M KCl at least 24 hours before use;

- Measurements will be taken within 72 hours of sample collection. If storage is required, samples must be stored in the dark and on ice.
- From the cut-off 5 cm syringe, the first two cms are analyzed for sediment porosity and percent organic matter. The upper 3 cm are analyzed for redox and sulfides
- Measurements will be taken with Accumet AP63 Portable pH/Ion Meter and Orion Epoxy Redox/ORP electrode 9678BNW.
- Redox measurements will be recorded as millivolts relative to the normal hydrogen electrode (mV NHE) using the equation mVNHE=Eo+(224-T), where Eo=mV of unknown and T=temperature of unknown (oC) or as millivolts (mV), once the value has stabilized (drift < 10 mV/minute) or 2 minutes after commencement of measurement. Note samples that require 2 minutes.
- The redox electrode will be rinsed with distilled water and dried between measurements (gently blot dry with Kimwipe).

6.2. Sulfide analysis

Total dissolved sulfides, measured in micromolar (μM), are a measure of the accumulation of soluble sulfides, a major product of sulfate reduction that occurs under anaerobic conditions. This is a sensitive indicator of habitat degradation due to organic loading and the main indicator currently used to determine direct impact of an aquaculture operation.

As an accuracy check for the internal meter calculation, record the associated millivolt (mV) value for both the calibration curve and sulfide samples. This allows calculation of the sulfide value directly from the calibration curve.

Electrode accuracy check

Five calibration standards will be used to check the accuracy of the sulfide electrode prior to sample analysis (100 μM, 500 μM 1000 μM, 5000 μM and 10000 μM); *record both μM and mV readings*. Include notes regarding any calibration problems on data sheets.

- Calibration of the sulfide electrode is stable for up to 3 hours.
- The Accumet AP63 Portable pH/Ion meter's default calibration values are a factor of 10 times less than the actual standard concentrations, therefore the displayed calibration value must be multiplied by 10 to obtain the correct concentrations;

Sulfide measurements

The sulfide electrode will be filled with Orion Optimum Results B (cat. No. 900062) at least 24 hours before use;

- Measurements will be taken within 72 hours of sample collection.
- Measurements will be taken with Accumet AP63 Portable pH/Ion Meter and Orion 9616BNWP Sure-Flow™ Combination Silver/Sulfide Electrode 9616BNWP
- Each 3 mL sub-sample will be mixed with 3 mL of sulfide antioxidant buffer (SAOB) + L-ascorbic acid (SAOB + L-ascorbic acid is stable for a maximum of 3 hours).
- Sulfide readings will be taken once the SAOB + L-ascorbic acid/sample mixture reaches the same temperature at which the electrode was calibrated.
- Sulfide reading will be recorded once the value has stabilized (usually within 2 minutes). Note samples that require 2 minutes. Record μM and mV values.
- The sulfide electrode is to be rinsed with distilled water and dried between sample measurements (gently blot dry with Kimwipe).

6.3. Sediment porosity

Porosity is the percentage (%) of pore volume or void space, or that volume within any material (e.g. bottom sediment) that can contain fluids.

The method described below is to be performed using a gravity convection drying oven (Lindberg/Blue M 260) and Denver Instrument Summit Series Analytical Balance, SI 234 *however this method will apply to other make/models*:

- Pre-heat drying oven to 60°C
- Extrude ~ 2 mL (from 5 cc syringe) of sediment sample into corresponding pre-weighed (g) scintillation vial.
- Record wet weight (g) of pre-weighed scintillation vial and sediment sample and place in the drying oven for 24-48 hours (at 60°C).
- At the end of drying period, re-weigh scintillation vial and sediment sample.
- The porosity value can be calculated as a percentage of the total volume of material:

(Final vial + dried sediment weight (g)) – vial weight (g) = dried sediment weight (g)

$$100 - \frac{\text{Dried sediment weight (g)}}{\text{Wet sediment weight (g)}} \times 100\% = \%\ \text{Porosity value}$$

6.4. Sediment Percent Organic Matter (POM)

Organic content is observed to determine the portion (%) of sediment that is of plant or animal origin (combined). This variable is a good measure of organic loading.

The method described below is to be performed in on the pre-dried samples from porosity analysis (section 5.3) using a muffle furnace (Barnstead/Thermolyne, Type 48000) *however this method will apply to other make/models*:

- Handling the weigh boat with tweezers, add approximately 0.5 g of ground dried sediment from the porosity analysis to a pre-weighed, pre-ashed muffle furnace safe weigh boat.
- Place in muffle furnace at 490°C for 8 hours.
- Percent organic matter can be calculated as follows:

Dried sediment weight – (Weight @ 490°C – weigh boat (g)) = sediment organic content (g)

$$\frac{\text{Sediment organic content (g)}}{\text{Sediment dry weight (g)}} \times 100\% = \%\ \text{percent organic matter}$$

7. RECORD KEEPING

NSDFA will review all environmental monitoring performed as part of this program. Data will be submitted to NSDFA within 14 days of collection (except for porosity and percent organic matter which can be submitted up to 21 days after collection). In summary, the final submission will include:

- Spreadsheet # 1: Complete results of laboratory analysis of total dissolved sulfide, redox potential and porosity and percent organic matter in editable electronic format.
- Spreadsheet # 2: Coordinates for all locations where any sampling took place, in editable electronic format, with associated summary results of laboratory analysis (Appendix A1).

- Copies of completed log sheets for every sampling station. This would also contain description of, and reasoning for, any discrepancies between NSDFA sample plan and actual samples taken (Appendix A2).
- High quality indexed (chaptered) DVD with video from every sampling station.

8. BASELINE REQUIREMENTS

New sites and site expansions are subject to baseline environmental reporting. This would include environmental monitoring specific to each application. Appendix B includes typical baseline requirements for marine finfish aquaculture. Shellfish applications are required to complete similar studies; however, the level of monitoring is based on the level and type of proposed production.

SOP APPENDIX A: Associated Field Sheets

The following appendices are templates and field sheets that are to be used as part of the standard operating procedures.

Appendix A1 includes a coordinate table to record and submit all coordinates used to determine precise sampling station locations. This template also includes columns to input summary laboratory results.

Appendix A2 is a log sheet to record field notes.

Appendix A3 is a data sheet for redox/sulphide calibration records.

APPENDIX A1: COORDINATE & LAB RESULTS TEMPLATE

This template should be provided in editable electronic spreadsheet format (e.g. Excel). The coordinates should be submitted in NAD83 (decimal degrees or UTM meters). This template also includes columns to input summary laboratory results. Please submit this table in addition to completed laboratory analysis of total dissolved sulfide, redox potential and porosity and percent organic matter.

Sample ID		Location	Redox (mV)	Sulfide (µM)	Porosity (%)	Organic Content (%)	Actual Latitude	Actual Longitude
Station	ID #							
NSH01	1							
	2							
	3							
NSH02	1							
	2							
	3							

APPENDIX A2: LOG SHEET

Date:		**Site Description:**
Location:		**(e.g. notes regarding sampling difficulties, weather issues, etc.)**
Time:		
Recorder Name(s):		
Sample Collected By:		
Lease # or Reference Site:		
Sampling Station #:		
Distance and Direction from WP:		
		Benthic Descriptor Key:
Station Depth (m):		1. Oxic layer thickness, sediment colour, gradient type, sediment type
Water Temperature (ºC):		2. Degree of odour (strong, slight, none)
Video (y/n):		

Grab/Core Sample	Sample (✔)	Sample label #	Sediment Description [1]	Grab Depth (cm)	Odour [2]	Flora / Fauna
Benthic Replicate A						
Benthic Replicate B						
Benthic Replicate C						

KEY TERMS OF LOG SHEET

Date – Date sample was collected.

Location – Bay or Harbour name.

Time – Time sample was collected.

Recorder Name - Name of person taking notes.

Sample Collector/Diver(s) Name – Name of person who collected the sample using remote grab or diver who collected the core.

Lease # or Reference Site – Indicate the actual lease number if on site. If not on site, list as reference station.

Sampling Station # - Indicate the predetermined station identification code (e.g. SBH03)

Distance and Direction from WP – Always provide coordinates for each sampling station. Indicate the distance and direction from the intended waypoint.

Station Depth – Water depth at time of sampling.

Water Temperature – Surface water temperature at time of sampling

Video (y/n) – Indicate if video was successfully collected. If no video collected, note the reason.

Site Description – Include any additional notes pertaining to site changes, sampling difficulties, anchoring/mooring, weather, observations of interest, etc).

Sample (✓) – Indicate if replicate core was collected.

Sample Label # - List identification number listed on replicate core.

Sediment Description – Describe sediment characteristics from grab sample.

Grab Depth – The measurement, in centimeters, of the depth of the sediment within the grab.

Odour – Indicate degree of odour from the sediment (strong, slight, none).

Flora/Fauna – Describe flora/fauna characteristics from grab sample.

APPENDIX A3: REDOX-SULFIDE CALIBRATION & DATA RECORD

Date of analysis: _____ Start time: _____

Location: _____ End time: _____

Analysis performed by: _____

Sulphide calibration:

Calibration value	µM	mV
STD 100		
STD 500		
STD 1000		
STD 5000		
STD 10000		

Redox Calibration

START: Zobell's A: _____ Zobell's B: _____ Diff: _____ Other std: _____

FINISH: Zobell's A: _____ Zobell's B: _____ Diff: _____ Other std: _____

Samples:

Sample ID	Station	Redox (mV)	Sulphide (µM)	Sulphide (mV)	NOTES:

APPENDIX B: Baseline Requirements

With any new site developed in Nova Scotia, or any significant site amendment or re-activation, it is important that appropriate baseline data be collected and that ongoing monitoring reflects the original data requirements. A typical application for a finfish operation would require complete sediment analysis and video collected from lease and reference locations, plus video monitoring of all lease corners, current measurements and additional site characteristics, as determined by NSDFA after reviewing site application.

There are many shellfish sites in NS that pose little environmental risk, and therefore warrant a different degree of baseline monitoring within the EMP. Sampling of shellfish sites to date by, the EMP, has shown low risk interactions with the marine environment compared to larger aquaculture operations. However, some areas with a high level of shellfish culture may justify complete baseline and routine monitoring, based on a bay-specific risk-assessment process.

Typical Baseline Monitoring Requirements for Proposed Finfish Aquaculture in Nova Scotia
In order to evaluate benthic habitat conditions within the lease area information concerning currents, sediment grain size, percent organic matter, porosity, redox potential and sulfide concentration must be provided. The following information describes the sampling locations and the methodologies for data acquisition required by the Nova Scotia Department of Fisheries and Aquaculture (NSDFA), Aquaculture Division and Fisheries and Oceans Canada (DFO), Habitat Protection and Sustainable Development (HPSD) Division. Two hard copies, and an electronic copy, of the required information and video must be sent to:

Attention: Manager, Aquaculture Development
Nova Scotia Department of Fisheries and Aquaculture, Aquaculture Division
PO Box 2223
Halifax, NS
B3J 3C4

Location of Stations
The following outlines the required stations for the baseline sampling program. DFO-HPSD in conjunction with the NSDFA determined the locations for this sampling program. Please see the diagrams located in SOP Section 2 for the number and location of baseline monitoring stations.

Sampling stations are located at the corners of the lease and within the proposed lease tenure. Reference stations are located outside of the lease area.

The choice of reference sites for benthic comparison includes a consideration of general benthic conditions in the area and within the lease area. The location of the reference station will have similar depth contour and bottom characteristics as those contained within the lease site. These reference sites should be 100 – 300 m from the site in an alongshore axis both upstream and downstream of the site.

Video Monitoring
Video monitoring will be conducted at all stations for all three leases. The Observation Key located in Appendix B1 should be used to complete the Summary of Observations located in Appendix B2, based on the video collected. High quality copies of the original, unedited footage should be provided to DFO - HPSD and NSDFA - Aquaculture Division.

A detailed process for the collection of video is described in SOP Section 3: Video Recording Methodology.

Current Meter
A current meter will be deployed in the center of the proposed lease tenure. Measurements of current speed and direction must be recorded at the center of the site, at least every 15 minutes, over a minimum duration of 30 days, using an ADCP current meter set at 1 m sampling bins. Each observation of speed and direction must be made over at least a 5-minute averaging period, and expressed as that average. The current meter must be correctly calibrated and dated calibration sheets must be submitted along with the entire current meter record.

NOTE: Current data may not be required for some finfish expansions or shellfish applications and/or may not require an ADCP for a full 30 day deployment (contact NSDFA to confirm).

Sulfide, Redox, Organic Content, Porosity and Grain Size
All stations listed above, with the exception of the corner stations have been designated for benthic sampling. Samples will be collected in triplicate (i.e. 3 syringes from 3 separate grab or cores per station) and analyzed for oxidation-reduction potential (redox), sulfide ion content, percent organic matter and porosity (both expressed as a percentage), and sediment grain size. Sulfide levels, redox potential, percent organic matter, and porosity represent four fundamental sediment conditions that together provide information on fish habitat in the benthic environment.

The methods to be utilized to determine the levels of sulfide and redox in the sediment samples are contained in the document titled "*A Recommended Method for Monitoring Sediments to Detect Organic Enrichment from Mariculture in the Bay of Fundy*", Wildish et al. (1999). **Critically, measurements should be obtained using the top two centimeters of sediment only.**

All samples will be analyzed for redox and sulfide in accordance with the standard operating procedures employed by DFO and modified from those in Wildish et al. (2004). **The modification is that redox and sulfides will be measured in a vial of extracted sediments to reduce the small-scale spatial variation that occurs when the redox probe is inserted into cores.**

Other parameters discussed (e.g. video) will serve as confirmation mechanisms for the geochemical analysis. An important consideration used in this process is that coastal habitats in Nova Scotia can be organically rich due to natural processes and therefore may naturally exhibit variable oxygen conditions. This is a condition that may be reflected in reference samples and where it occurs, it will be a consideration of management decisions.

APPENDIX B1: OBSERVATION KEY

- ✓ *Depth:* Provide the depth of water.
- ✓ *Time:* Provide the time the video footage was shot.
- ✓ *Sediment Type:* Give the sediment type as well as its relative proportion (e.g., 33% silt, 66% coarse sand).
- ✓ *Sediment Colour:* Give the approximate colour.
- ✓ *Macrofauna/flora Qualitative Presence/Absence*: List the common names of organisms that are present.
- ✓ *Comments:* Provide any additional information that may be of interest to this station.

Descriptive name		Diameter (mm)
Gravel	Boulder	>256
	Cobble	64-256
	Pebble	4-64
	Granule	2-4
Sand	Very coarse	1-2
	Coarse	0.5-1
	Medium	0.25-0.5
	Fine	0.125-0.25
	Very fine	0.063-0.125
Mud	Silt	0.004-0.063
	Clay	<0.004

APPENDIX B2: VIDEO MONITORING SUMMARY OF OBSERVATIONS FOR SAMPLE SITE

Stn. #	Depth (m)	Time	Observation			
			Sediment Type and Proportion	Sediment Colour	Macrofauna/flora Qualitative Presence/Absence	Comments

LIST OF REFERENCES

Grant, J. 2010. *A Summary of the March 2010 NS EMP Techincal Review Workshop and Laboratory Demonstration*. Halifax, Nova Scotia.

Hargrave, B.T. 2009. General Services Contract for Nova Scotia Department of Fisheries and Aquaculture*: Sampling protocols when using diver and core tubes.* Owen Sound, Ontario.

Province of Nova Scotia (PNS). 2011. *Environmental Monitoring Program Framework for Marine Aquaculture in Nova Scotia.* Halifax, Nova Scotia.

Smith, J., Grant, J., and Stuart, R. 2002. *Design of the Environmental Monitoring Program for the Marine Aquaculture Industry in Nova Scotia.*

Wildish, D.J., Akagi, H.M., Hamilton, N. and Hargrave, B.T. 1999. *A recommended method for monitoring sediments to detect organic enrichment from mariculture in the Bay of Fundy*. Can. Tech. Rep. Fish. Aquat. Sci. 2286: iii + 31 p.

Wildish, D.J., Akagi, H.M., Hargrave, B.T. and Strain, P.M. 2004. *Inter-laboratory calibration of redox potential and total sulfide measurements in interfacial marine sediments and the implications for organic enrichment assessment*. Can. Tech. Rep. Fish. Aquat. Sci. 2546: iii + 25 p.

STARTING POINT QUESTIONS		
Question	**Sample Response**	**Response**
How have environmental conditions on reserve been documented?	Phase I Environmental Site Assessment Report	
What environmental issues are presently important in the community?	Illegal dumping	
How are those important environmental issues being managed?	*Indian Act Dumping Law*	
What environmental issues are not being resolved?	Leaking Underground storage tanks	
What environmental issues are likely to arise as a First Nation implements its Land Code?	Potential contamination of soils	
What provincial and federal environmental regulations have affected activities on the reserves?	*Canadian Environmental Assessment Act*	
Which First Nation staff members are responsible for identifying and responding to environmental issues?	Public works staff	
What Band Council Resolutions and policies have Chief and Council adopted regarding the environment?	Recycling	
How do the actions or mandates of First Nation's departments affect the environment?	Public works mandate to remove noxious weeds	
What environmental information was collected by Indigenous and Northern Development Canada (INAC) before the First Nation adopted a Land Code?	Capital Projects Reports	
Has that information been provided to the FN?	INAC provided environmental reports	
What does a First Nation's Land Code or Individual Agreement say about the environment?	Individual Agreement's Section 8 Annex F re: Interim Environmental Assessment process	